IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12573 of 2006

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1. M/s Bharti Airtel Ltd. [formerly known as M/s Bharti Televentures Ltd.], a Company incorporated under the provisions of the Companies Act, 1956 having its Registered Office situated in New Delhi, and one of its Branch Offices situated at 4th Floor, Uday Bhawan, Marwari Awas Grih, Fraser Road, P.S. Kotwali, Town & District- Patna through its Manager [Legal] & Authorized signatury, Rajesh Kumar Singh, s/o- Late S.S. Bhadauria, Resident of Uday Bhawan, Marwari Awas Grih, Fraser Road, P.S. Kotwali, Town & District- Patna
2. Manoj Kohli, President/M/s Bharti Airtel Ltd. Resident of H-5/12, Qutab Ambience, Mahrauli Road, New Delhi- 110 030 through its Power of Attorney Holder, Shishir M. Kumar, S/o- Shri Ganga Nath Kumar, Chief Operating Officer of M/s Bharti Airtel Ltd., Resident of Uday Bhawan, Marwari Awas Grih, Fraser Road, P.S. Kotwali, Town & District- Patna

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary-cum-Commissioner of Commercial Taxes, Government of Bihar, Vikash Bhawan, Bailey Road, Patna
2. The Secretary, Department of Law, Government of Bihar, Patna
3. The Dy. Commissioner of Commercial Taxes, Patliputra Circle, Patliputra
4. The Commercial Taxes Officer, Patliputra Circle, Patliputra

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.D.Sanjay, Sr. Advocate Ms. Parijat, Advocate
For the Respondent/s	:	Mr. Vikas Kumar, S.C. 11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 15-03-2018

Having heard learned counsel for the parties, we find that primarily the writ petition was filed challenging the Constitutional validity of the Bihar Tax on Entry on Goods into Local Areas for Consumption, Use or Sale Therein Act, 1993 and the petition was filed in view of the pendency of the matter

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referred to the Constitution Bench of the Supreme Court in the case of **Jindal Stainless Ltd. Vs. State of Haryana- (2006) 7 SCC 241**. Now, the Constitutional validity of the Act has been decided by the Constitution Bench in the case of **Jindal Stainless Ltd. & Anr. Vs. State of Haryana & Ors.-(2017) 12 SCC 1** and, therefore, the question need not be considered by us now in this petition. However, grievance of the petitioner seems to be that the Assessing Officer has not conducted the assessment proceedings properly. The assessment has been done in an illegal manner and imposition of penalty according to the petitioner at three times of the tax was also not warranted. If that be so, petitioner is now required to challenge the order of assessment (Annexure-7/A) dated 24th of March, 2006 before the competent appellate authority and it is for the appellate authority to consider objections of the petitioner with regard to validity of the assessment done by the Assessing Officer including the question of imposition of penalty.

Keeping in view the aforesaid, we grant liberty to the petitioner to file an appropriate appeal before the statutory appellate authority. In case an appeal is filed within a period of 45 days from today, the appellate authority shall proceed to decide the appeal on merit and shall not reject it on the ground

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of delay. Needless to emphasize that all questions with regard to the question of assessment and imposition of penalty apart from the legal principles laid down by the Supreme Court in the case of **Jindal Stainless Ltd. (supra)** are kept open to be considered by the Appellate Authority. The petitioner may move an application for stay before the competent appellate authority along with the memorandum of appeal and till decision on the stay application by the appellate authority, coercive steps for recovery, if any, shall be kept in abeyance.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

P.K.P./-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	22.03.2018
Transmission Date	

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