IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3889 of 2015

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M/s IRIS Electronics [India] Pvt. Ltd,\.,a Company incorporated under the provision of the Companies act, 1956 having its place of business at 786/B, Block- V, Patliputra Industrial Area, Patna - 800013 throughone of its Directors, Zakir Hussain, son of Late Wazir Hussain Khan, Resident of South Gandhi Nagar, Boring Road, P.S. S. K. Puri, Dist. Patna.

2. Zakir Hussain, son of Late Wazir Hussain Khan, Resident of South Gandhi Nagar, Boring Road, P.S. S. K. Puri, Dist. Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Patna.
2. The Sr. Deputy Collector cum Certificate Officer, Patna.
3. The Deputy Commissioner of Commercial Taxes, Patliputra Circle, Patna.

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Alok Kumar Agrawal,
Ms. Priya Gupta, Advocates

For the Respondent/s : Dr. Anshuman Singh, AC to AG

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 27-08-2018

The present writ petition has been filed for the following reliefs—

(i) For quashing the order dated 27.01.2015 passed in Certificate Case No. 3/13-14 by the Sr. Deputy Collector-cum-Certificate Officer, Patna (Respondent No. 2) by which in most mechanical manner and without considering the preliminary objection of the petitioner he has issued the Distress Warrant against the Director of the petitioner in his personal name, in spite of the fact that the certificate proceeding is against a Company.

(ii) For quashing of the certificate proceeding bearing Certificate Case No. 3/13-14 pending before the respondent no. 2 at the instance of respondent no. 3 as being wholly without jurisdiction and illegal and also

pre-mature.

(iii) *For a direction that the respondent Certificate Officer could not have proceeded in the certificate proceeding as the demand created by the Sales Tax Authority had not become final and binding and therefore in view of the Board's instruction no. 10 under the Public Demands Recovery Act (for short 'the PDR Act') the certificate proceeding was premature, as the alleged liability is doubtful and subject to the revision to be passed in by the Commercial Taxes Tribunal, Bihar, Patna and by the Commissioner of Commercial Taxes, Bihar, Patna.*

(iv) *For quashing the certificate proceeding as also the order dated 27.01.2015 as the same is not only arbitrary but also illegal being in the teeth of the settled law laid down by this Hon'ble Court.*

(v) *For a declaration that Section 48 of the Bihar Public Demand Recovery Act, 1914 vest power in the Board of Revenue to make rules as to the procedures for the purpose of carrying out the object of the Act and as such the Board's instruction under the Public Demand Recovery Act are mandatory in nature and binding on the Certificate Officer, Respondent No. 2.*

(vi) *For restraining the Respondent No. 2 from proceeding further with the Certificate Case which has been initiated on the requisition filed by the Respondent No. 3, being an Assessment Order, under the provisions of Bihar Sales Tax laws even during pendency of Revision before the Revisional Authority; and/or for any other relief(s) for which the petitioner may be found entitled to in the facts and circumstances of the present case.*

2. Learned counsel for the petitioner makes a short submission to assail the impugned certificate proceedings against the petitioner-Company on the ground that the order dated 30.01.2009 passed by the Commissioner of Commercial Taxes, Bihar, Patna was challenged before the Commercial Taxes Tribunal, Bihar, Patna in Misc. Revision Case No. 136 of 2009 which was admitted on 05.04.2010 and remains pending. It is therefore submitted that the

order of the Commissioner directing to realise tax from the petitioner is yet pending in revision and as such no recovery can be effected at this stage as sought to be done by the Certificate Officer.

3. This Court is unable to accept the plea of the petitioner. It is well settled that mere filing of an appeal or revision does not have the effect of stay of proceedings in a decree or order appealed from, unless the execution thereof has been stayed. To a similar effect is the provision in Order 41, Rule 5 of the Code of Civil Procedure. The proceedings for recovery by a Certificate Officer is akin to execution of a decree and the same may thus proceed in absence of any stay order by the appellate/revisional authority.

4. It transpires from the averments made in para 13 of the writ petition that the petitioner was not granted a certified copy of the assessment order dated 06.04.2009 along with the demand notice dated 08.04.2009 (Annexure-3 and 3/A respectively) by which the demand in question was created for the period 2004-05 to enable the petitioner to file an objection petition under Section 9 of the PDR Act.

5. In the above view of the matter, the writ petition is disposed of, granting liberty to the petitioner to file its objection petition under Section 9 of the PDR Act within a period of 30 days from today, which, if done, shall be considered and disposed of by the Senior Deputy Collector-cum-Certificate Officer, Patna (Respondent No. 2) on its own merits in accordance with law and in terms of Section 10 of the PDR Act within a further period of four weeks thereafter.

6. It is made clear that in case the certified copies of the assessment order dated 06.04.2009 along with the demand notice dated 08.04.2009 are applied for, the same shall be granted by the Deputy Commissioner of Commercial Taxes, Patliputra Circle, Patna

(Respondent No. 3) without delay.

7. The writ petition stands disposed of with the aforesaid observations and directions.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.09.2018
Transmission Date	NA