IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4149 of 2018

==

Birla Corporation Ltd., a Company incorporated under Companies Act, 1956 havingits Head Office at 9/1 R N Mukherjee Road, Kolkata and Regional Office at 301-303 Ashiana Towers, Exhibition Road, Patna -800003 through its Dy. General Manager (Accounts and Taxation) Kamlesh Chandra Chaurasia, son of Late Sharda Prasad Chaursasia, resident of 1453, Kidwai Nagar, PO Allahpur, PS George Town, Allahabad

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Patna
2. Dy. Commissioner of Commercial Taxes, Special Circle, Patna

.... Respondent/s

==

Appearance :

For the Petitioner/s : Mr. D.V.Pathy
Ms. Manju Jha and Mr. Sadashiv Tiwary

For the Respondent/s : Mr. Vikash Kumar, SC11

==

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

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 07-03-2018

Challenging the order Annexure-3 series passed by the respondents on 16.02.2018 under Section 31 of the Bihar Value Added Tax Act, 2005 (Bihar VAT Act, in short) read with Section 8 of the Entry Tax Act for the assessment year 2015-16 and contending that the petitioner having already paid VAT are not liable to pay Entry Tax, this writ petition has been filed on various counts.

Even though the petitioner has statutory remedy of appeal against the impugned action, learned counsel for the petitioner argues that the legal question involved in the matter stands concluded by a Division Bench judgment of this Court in the case of Shell India Ltd . Vs. The State of Bihar in CWJC No. 7623 of 2015 and other cases decided by other Division Bench of this Court on 31.07.2015 and the S.L.P. of the State Government filed has also been dismissed by the Supreme Court on 12.02.2018 in SLP (Civil) Nos. 20771-20773/2016. Accordingly, the learned counsel argues that now the tax imposed is liable to be quashed.

However, learned counsel for the respondents points out that on the same ground for the previous assessment year the petitioner had filed two writ petitions being CWJC Nos. 15305 of 2017 and 15306 of 2017 and both the writ petitions were disposed of by this Court on 08.01.2018 taking note of the fact and circumstances that statutory remedy of appeal under Section 72 of Bihar VAT Act and, therefore, it is argued that this writ petition is not maintainable when statutory remedy is available.

We have heard learned counsel for the parties at length and we find that serious dispute between the petitioner and the Counsel for the State is there as to whether the issue stands decided in the case of Shell India Ltd. (supra). Learned counsel for the State tried to demonstrate before us that the law laid down in Shell India Ltd. (supra) will not be applicable in the present case.

Taking note of the totality of the facts and circumstances and the recent decision dated 08.01.2018 in the two writ petitions filed by the present petitioner itself pertaining to the previous year whereby we have directed them to take recourse of remedy of appeal and have granted protection from coercive recovery till the decision in appeal. We deem it appropriate to pass similar order in this case taking note of the earlier order passed in CWJC Nos. 15305 of 2017 and 15306 of 2017 on 08.01.2018 we grant liberty to the petitioner to move the appellate authority and file an appeal within a period of 30 days from the receipt of certified copy of this order and the appellate or the revisional authority shall proceed to decide the same on merit in accordance with law after hearing all concerned.

The petitioner is also granted liberty to file an appeal without depositing any amount and no coercive step shall be taken for recovery against the petitioner till the decision on the appeal or the revision. That apart, till decision of appeal or revision the petitioner should also not insist upon refund of the excess amount of tax said to have been collected.

With the aforesaid, the writ petition stands disposed of.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

mrl./-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	09/03/2018
Transmission Date	