IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5645 of 2018

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Birla Corporation Ltd., a company incorporated under the Companies Act, 1956 having its Head Office at 9/1 R N Mukherjee Road, Kolkata, and RegionalOffice at 301-303 Ashiana Towers, Exhibtion Road, Patna -800003 through its Deputy General Manager (Accounts & Taxation) Kamlesh Chandra Chaurasia, son of late Sharda Prasad Chaurasia, 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. Joint Commissioner of Commercial Taxes (Appeals), Central Division, Patna

3. Deputy Commissioner of Commercial Taxes, Special Circle, Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 5693 of 2018

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Birla Corporation Ltd., a company incorporated under the Companies Act, 1956 having its Head Office at 9/1 R N Mukherjee Road, Kolkata, and RegionalOffice at 301-303 Ashiana Towers, Exhibtion Road, Patna -800003 through its Deputy General Manager (Accounts & Taxation) Kamlesh Chandra Chaurasia, son of late Sharda Prasad Chaurasia, 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. Joint Commissioner of Commercial Taxes (Appeals), Central Division, Patna

3. Deputy Commissioner of Commercial Taxes, Special Circle, Patna

.... Respondent/s

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Appearance :
(In CWJC No.5645 of 2018)
For the Petitioner/s : Mr. D.V.Pathy
Ms. Manju Jha and Mr. Sadashiv Tiwary

For the Respondent/s : Mr. Vikash Kumar, SC 11
(In CWJC No.5693 of 2018)
For the Petitioner/s : Mr. D.V.Pathy
Ms. Manju Jha and Mr. Sadashiv Tiwary
For the Respondent/s : Mr. Vikash Kumar, SC11

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

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 29-03-2018

As common questions are involved in both the writ petitions they are being disposed by this common judgment.

It is the case of the petitioners that earlier they had approached this Court vide Annexure-2 dated 8.1.2018 passed in CWJC No. 15305 of 2017 and 15306 of 2017 the appellate authority before whom the appeal was pending was directed to pass an order with regard to stay of the demand pending finalization of the appeal/revision in question. It is stated that after the aforesaid orders were passed on 8.1.2018, in the case of the present petitioner itself with regard to subsequent assessment year in CWJC No. 4149 of 2018 on 7.3.2018 vide Anneuxre-3 this Court even though relegated the petitioner to take recourse to the statutory remedy of appeal to stay the entire recovery pending finalization or revision. Grievance is that while deciding the impugned order for stay in pursuant to the order earlier passed in the writ petitions on 8.1.2018 the learned appellate authority has directed for depositing 20% of the demand and has only stayed the remaining recovery.

It is argued that in view of the absolute stay granted subsequently in the case of the present petitioners on 8.3.2018 for this year also there should be an absolute stay and there cannot be two different sets of order with regard to the same petitioners for different years.

Learned counsel for the State vehemently opposed the aforesaid prayer, took us through the impugned order and reasons that weighed with the appellate authority exercising the discretion of only granting conditional stay on deposit of 20% of the amount.

We have considered the rival contentions and on a perusal of the impugned order we find that the learned appellate authority has indicated various reasons in the matter of only granting conditional stay to the extent of staying 80% of the recovery. In our considered view merely because for a subsequent year this Court had granted absolute stay taking note of the fact of that particular year, it is not appropriate to interfere into the discretion exercised by the learned appellate authority in the matter of granting stay pending finalization of the appeal. The discretion exercised by the learned appellate authority cannot be termed perverse, erroneous or illegal to such an extent that interference into the matter at this stage is called for.

Accordingly, finding no ground to make any indulgence into the matter, we dismiss the writ petitions.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

mrl./-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04/04/2018
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