IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1558 of 2018

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1. Lakhotia Transport Company Pvt. Ltd. a proprietor concern, having its office at 26 Tara Chand Dutta Street, P.O. Colootola P.S. Jorasaku, Kolkata through its authorized signatory, Hrishikesh Singh, Son of Shri Ganesh Prasad Singh, resident of 1/2B Coossipore Road, Kolkata Municipal Corporation, P.O. Cossipore, P.S. Chitpur, Kolkata- 700002.
2. MCS Roadline, a proprietory Concern, having its office at 34/1 Ratu Sarkar Lane, P.O. Colootola, P.S. Jorasakhu, Kolkata- 73 through its autorized signatory, Hrishikesh Singh, Son of Shri Ganesh Prasad Singh, resident of 1/2B Coossipore Road, Kolkata Municipal Corporation, P.O. Cossipore, P.S. Chitpur, Kolkata- 700002.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar Patna having its Office at Vikas Bhawan, Bailey Road, Patna.
2. Dy. Commissioner, of Commercial Taxes, Bhabhua Circle, Bhabhua (Kaimur).
3. Commercial Taxes Officer, Bhabhua Circle, Bhabhua (Kaimur).

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. D.V.Pathy, Adv.
Mr. Sadashiv Tiwari, Adv.
For the Respondent/s : Mr. LALIT KISHORE- AG

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-01-2018

Challenging an order, Annexure 7 dated 7.12.2017, passed by the Commercial Tax Officer, Bhabua Circle, Bhabua, respondent No.3, this writ petition has been filed and the prayer made is that the encashment of bank guarantee in the impugned communication be quashed.

Petitioner was subjected to assessment by the Commercial Tax Officer and vide assessment order passed on 12.12.2014, penalties have been assessed on the petitioner. Challenging the same, an appeal was filed before the Joint Commissioner of Commercial Taxes (Appeals), Magadh Division, Gaya which was dismissed on 25.2.2014 and thereafter it seems that an appeal was filed before the Appellate Tribunal which is pending and, in the meanwhile, as the vehicle of the petitioner was seized, a writ petition was filed before this Court seeking release of the vehicle. By an order dated 1.4.2015, this Court permitted release of the vehicle on furnishing a bank guarantee, as was indicated in the order. Now grievance of the petitioner is that the appeal is still pending, there is no Presiding Officer available in the Tribunal to hear the appeal and during the pendency of the appeal, the bank guarantee, based on which the vehicle was released, is being encashed. We are also informed that a stay petition has been filed on 19.3.2015 and the orders on the same have not been passed. Prayer is made that pending finalization of the appeal, the bank guarantee should not be encashed.

Having heard learned counsel for the parties, we are of the considered view that as the appeal filed by the petitioner is pending, till decision on the appeal or at least an order on the interlocutory application filed by the petitioner for stay, the encashment of the bank guarantee should be kept in abeyance and enforcement of the order, Annexure 7 should remain stayed and only after the decision of the appeal on merit or an order passed on the interlocutory application for stay. We order accordingly and dispose of the application.

The communication be made to the bank concerned also with regard to this order restraining it from enforcing the order.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	3.2.2018
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