IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13248 of 2018

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Hindustan Petroleum Corporation Ltd., a company incorporated under the Companies Act, 1956 having its head office at 17, J D Tata Road, Church Gate Mumbai and Branch Office at 6th Floor, Lok Nayak Jai Prakash Bhawan, Dak Bunglow Road, Patna-800001 through its Senior Manager Finance, Deena Nath Gupta, Son of Shri Moti Lal Gupta, Resident of House No.286/24, Niwas Khewra, Aish Bag, P.O. Rajendra Nagar and P.S.- Nikaka Hindola, Lucknow.

.... Petitioner

Versus

1. The State of Bihar through Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Commercial Taxes Tribunal Bihar, through its Secretary having its office at Kautilya Bhawan, Anta Ghat, Patna.
3. Dy. Commissioner of Commercial Taxes, Special Circle, Patna.

.... Respondents

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Appearance :
For the Petitioner/s : Mr. D.V.Pathy
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 ORDER
(Per: HONOURABLE THE CHIEF JUSTICE)

2. 06-08-2018 It is the grievance of the petitioner that a prayer for waiver made in the petition under Section 73(2) of the Bihar Value Added Tax Act, 2005 has been rejected without considering the law laid down by this court in the case of CWJC No. 14655 of 2015 in Idea Cellular Infrastructure Services Limited Vs. State of Bihar decided on 07.01.2016, inviting our attention to the following observations made by the Division Bench in the aforesaid judgment.

> "We may however, at this stage, refer to the observations of the Tribunal that the benefit of grant of waiver as provided under Section 73(2) of the Act is only available to those who are able to show that they have no capacity to deposit the amount in dispute. According to us, that cannot be a sole ground for either allowing or denying the said benefit and all the other relevant factors which come into play which considering the grant of any interim order of stay ought to be considered by the Tribunal while deciding any such application before it.
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> Both the writ applications are, accordingly, allowed with the aforesaid observations and directions."

In the aforesaid judgment, it is stated that the reasons for waiver as pleaded by the petitioner has not been considered, however the pleadings and the grounds raised for waiver in the waiver application are not available on record.

Keeping in view the aforesaid for the present we deem it appropriate to grant one more opportunity to the petitioner to file a duly considered waiver application raising all the grounds along with the judgments of the High Court and the Hon'ble Supreme Court on the basis of which the waiver is sought for and if the same is done, the tribunal should reconsider the same with the observations made as reproduced hereinabove in the case of Idea Cellular Infrastructure Services Limited Vs. State of Bihar and pass a fresh order with regard to waiver within a period of 15 days of the presentation .

We may observe that at the time of seeking waiver if an application is filed, raising all the grounds enclosing the judgments of the High Court and the Hon'ble Supreme Court, the Tribunal should consider them and in case an application is not filed the Tribunal should proceed in accordance with law.

This application is disposed off accordingly.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Rajeev/-

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