IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3297 of 2019

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ETA General Pvt. Ltd. a company incorporated under the Companies Act, 1956 having its registered office at ETA Star House, New No. 71, Old No. 63, 3rd Floor, Sterling Road, Nugambakkam, Chennai-600034 and having its branch office at Plot No. 357 and 360, Naya Tola Roy Colony Phulwarisharif Opp. Jalsa Restaurant Patna through its through its authorized signatory, Ravi Shankar Prasad son of Shri.G.B.Prasad, resident of C/o Miscellaneous Stores, Ashok Raj Path, Golghar, P.o. GPO P.S. Gandhi Maidan, Patna-800001

... ... Petitioner

Versus

1. The State of Bihar through Commissioner of State Tax, Bihar, Patna having its office at Vikas Bhawan, Patna
2. Joint Commissioner of State Tax Gandhi Maidan Circle, Patna
3. Joint Commissioner of State Tax Gandhi Maidan Circle, Patna

... ... Respondents

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Appearance :

For the Petitioner/s : Mr. D.V.Pathy, Adv.
For the Respondent/s : Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 21-02-2019

Heard Mr. D.V.Pathy, learned counsel appearing for the petitioner and Mr. Vikash Kumar, learned SC-11, for the State.

The petitioner is aggrieved by the notice of attachment issued by the Joint Commissioner of State Taxes under section 47 of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as 'the Act') directing the Branch Manager, Jammu and Kashmir Bank Ltd., Armennian Street, Parrys Chennai to remit a sum of Rs.10,51,632/- lying in the account of the petitioner in favour of the Government Treasury/ Bank on account of recovery of dues under 'the Act' and dues accrued towards the Central Sales Tax relatable to the assessment year 2013-14. The notice of demand is dated 28.1.2019 and is impugned at Annexure 5 to the writ petition.

The grievance of the petitioner is that it is on the failure of the petitioner to produce Form-F and Form-C in relation to the transfer made by the stock transfer as well as Inter State Sales that such recovery has been effected.

Mr. Pathy, learned counsel for the petitioner, submits that though the notice of demand is on account of liability towards the VAT as well as Central Sales Tax but the issue raised in this writ petition is limited to the demand in so far as it creates liability towards the Central Sales Tax for the failure of the petitioner to produce declarations in Form-F and Form-C. Mr. Pathy while inviting attention of this Court to the copy of the acknowledgment enclosed with the writ petition to show that a revision application is filed and pending before the Commissioner of State Taxes under section 74 of ‘the Act’ since 25.9.2018, submits that it is the delayed action by the Commissioner in considering and disposing of the appeal which has invited the notice of demand three months later on 28.1.2019. While submitting that the required tax has been paid and that the responsibility of issuing Form-C and Form-F is on the Assessing Authority of recipient State in favour of the consignee of the goods received through Inter State Sale or by way of stock transfer, he submits that even though the returns filed well explain the tax paid by the petitioner, yet in absence of the declaration forms aforementioned, this liability has been fastened for a default not attributable to the petitioner rather on the Assessing Authority of the recipient State who has such obligation to discharge. He submits that since the revision application of the petitioner is pending disposal with respondent no.1, the Commissioner of State Tax, the petitioner may be given interim protection from the notice of demand until disposal of the revision application.

Learned counsel in support of the submission has relied upon a judgment of the Supreme Court reported in (2005)6 SCC 499 (**State of H P & ors. v. Gujarat Ambuja Cement Ltd. & Anr.**) and in particular reference to paragraph-37 he submits that filing of the declaration forms has been held to be directory requirement and not a mandatory obligation. Learned counsel has also invited attention of this Court to an order passed by a Co-ordinate Bench in C.W.J.C.No. 18260/2016, a copy of which is enclosed at Annexure 6, to submit that in the said case the Court taking note of the deposit made by the petitioner to the extent of 40% of the tax demand on the direction of the Joint Commissioner

(Appeal) has accorded interim protection with the direction to the appellate authority to dispose of the appeal. In short, the submission of Mr. Pathy is that similar protection can be extended to the petitioner of the present case.

Mr. Vikash Kumar, learned SC-11, appearing to oppose the relief prayed by the petitioner has relied upon the judgment of the Supreme Court recorded in the judgment reported in (2010)9 SCC 437 (**Kalabharati Advertising v. Hemant Vimalnath Narichania & ors.**) and in reference to the opinion expressed in paragraph-22 in so far as the interim relief prayed by Mr. Pathy is concerned, he submits that the same cannot be granted to the petitioner for two reasons, namely:

(a) while Rule 46 of the Bihar Value Added Tax Rules (hereinafter referred to as 'the Rules') itself caters to such relief which has not been availed as yet by the petitioner; and

(b) the Supreme Court has deprecated giving any such interim relief while relegating a litigant to the statutory remedy during the interregnum period.

We have heard learned counsel for the parties and have perused the records.

We are not required to express our opinion on the inter-party merit on the production of declaration forms as well as its nature and/or whether the petitioner is entitled for the benefit because the matter is yet pending before the revisional authority in the pending revision application and it is perhaps for this reason that the petitioner has simply sought for protection until disposal of the revision application which is pending since September, 2018. While expressing our anguish on the delayed disposal of the revision application by the Commissioner which has led to issuance of the notice of demand almost four months thereafter and which definitely is on account of delayed disposal. We are also conscious of the provisions underlying Rule 46 of ‘the Rules’ framed under ‘the Act’ which enables an aggrieved assessee to seek interim relief during the pendency of the revision/ appeal proceedings. Rule 46(4) relates to grant of interim relief and enables the assessee to make a stay application praying for grant of interim relief which unfortunately as per Mr. Vikash Kumar is yet to be filed by the petitioner.

In such view of the matter, where the petitioner has failed to move the statutory authority to seek interim relief which statutory remedy is much available to him under the Statute, we cannot allow him to bypass the same for seeking a relief which would well be considered by the statutory authority himself.

In such view of the matter and for the present we would dispose of the writ petition affording liberty to the petitioner to move the revisional authority under section 46(4) of 'the Rules' to seek interim relief and it goes without saying that any such prayer for interim relief made, shall be considered by the Commissioner and be disposed of within a week of its filing. Since the revision application itself is pending since September, 2018, the revisional authority would also be well advised to consider and dispose of the revision application itself on merits bearing in mind the statutory position regulating such production of declaration forms. The petitioner would be at liberty to raise all issues as raised before this Court at the time of hearing of the stay application but upholding the objection raised by Mr. Vikash Kumar, learned SC-11, we are not persuaded to grant any interim relief to the petitioner at this stage.

With the observations and liberty above, we dispose of the writ petition.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.02.2019
Transmission Date	NA