IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6192 of 2019

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M/s Himalaya Agro Chemicals Private Limited (Unit - II), By Pass Road, Gulab Bag, Purnia, through its Director, Kumar Krishna Prasad, aged about 56 years (Male), son of Shri Onkar Mal Agrawal, resident Unit, - II N.H. - 31 Bypass Road, P.S. Sadar, District Purnea ... ... Petitioner

Versus

1. The State of Bihar Through the Commissioner of Commercial Taxes, Bihar Patna
3. The Deputy Commissioner of Commercial Taxes, Purnia Circle, Purnia. Purnia Circle Purnia
4. The Assistant Commissionr of Commercial Taxes, Purnia Circle, Purnia Purnia Circle, Purnia.
5. The Assistant Commissionr of Commercial Taxes (Audit), Bhagalpur. Bhagalpur
6. The United Bank of India, Purnia Branch, Purnia, through its Branch Manager. Purnia, Branch Purnia, through its Branch Manager.

... ... Respondents

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Appearance :

For the Petitioner/s : Mr. Suraj Samdarshi, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 18-04-2019

Heard Mr. Suraj Samdarshi, learned counsel for the petitioner and Mr. Vikash Kumar, learned SC-11, for the State.

The petitioner has questioned the order dated 21.1.2019 passed by the Commercial Taxes Tribunal, Bihar, Patna in Case No. 146/2018, whereunder the petitioner has been directed to deposit 50% of the tax amount as a pre-condition for stay of the balance recovery. Alongside the petitioner has also sought direction in the nature of mandamus commanding the respondent authorities including the authorities in the Commercial Taxes Department as well as United Bank of India to release the Bank account of the petitioner, which according to the petitioner is a cash credit account and stands attached vide notice issued by the Commercial Taxes Department under section 47 of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as 'the Act') and the Rules framed thereunder, a copy of which is at Annexure 6 to the writ petition and is dated 27.3.2018.

There are other ancillary issues that have been raised in this writ petition but in the nature of the order that we propose to pass we do not think it necessary to delve into the inter-party merits because each of the two reliefs that is prayed by the petitioner stands covered by the opinion expressed by this Court on identical issues.

In so far as the relief is directed against the order of the Tribunal imposing a pre-condition for stay, in view of the legal position settled by this Court in the judgment reported in 2019(2) BLJ 714 (**National Agricultural Co-operative Marketing Federation Ltd. v. the State of Bihar & ors.**) as regarding the forum to question an order passed by the Commercial Tax Tribunal, Mr. Samdarshi prays for disposal of the writ petition to enable the petitioner to take recourse to the proper remedy so available to him in law in terms of the provision of Section 79 of 'the Act'.

In so far as the issue of attachment of cash credit account is concerned, while according to Mr. Samdarshi, the Bank account attached vide notice dated 27.3.2018 at Annexure 6 is a cash credit account, Mr. Vikash Kumar, learned State Counsel submits that in absence of any information available with the Commercial Taxes Department as to the nature of account, he is not in a position to express response of the department on the issue raised. Whether or not a cash credit account can be attached stands settled by the judgment of this Court rendered in the case of **Bhola Ram Steel Pvt. Ltd. v. the State of Bihar & ors**. arising from C.W.J.C.No. 5569/2019 which was heard analogous with a number of writ petitions and this Court on examination of the statutory provisions underlying section 47 of 'the Act' has held that neither cash credit account of an assessee can be attached nor the Bank concerned is supposed to be a mute spectator to such notice in view of the stipulations present under section 47(5) of 'the Act' which amply empowers the Bank to rebut any such notice.

In such view of the matter, we direct the respondent State as well as the United Bank of India to act in accordance with the judgment rendered by us in the case of **Bhola Ram Steel Pvt. Ltd.** (supra) within 72 hours of receipt/production of a copy of the judgment.

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

(Jyoti Saran, J)

(Anjani Kumar Sharan, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27.04.2019
Transmission Date	NA