IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4811 of 2019

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Micromax Informatics Ltd., a company registered under the Indian laws having its office at C/o Neeta Enterprises Sabajpura more, P.S.- Phulwari Sharif, Patna- 801505, through its Authorized Signatory Mr. Mantosh Kumar, aged about 27 years, Male, S/o Mr. Lakshman Jha, Resident of Village- Narayanpur, P.S.- Mauha, District- Vaishali.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar Patna having office at Old Secretariat, P.O.- Saschivalya, Patna.
2. The Additional Commissioner of Commercial Taxes, Patna (West Division).
3. The Joint Commissioner of Commercial Tax, Patna South Circle.
4. The Assistant Commissioner of commercial Taxes, Patna South Circle.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ravi Bhardwaj, Adv.
For the Respondent/s	:	Mr. Vivek Prasad, GP-7

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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 : 11-03-2019

Heard Mr. Ravi Bhardwaj, learned counsel appearing for the petitioner, Mr. Vivek Prasad, learned Government Pleader No. 7 for the State.

The petitioner is aggrieved by the conditions put by the appellate authority for the purpose of grant of *ad interim* stay to the demand raised under Section 25 read with Section 39 of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as ‘the Act’), a copy of which is enclosed with Annexure-4 (series) which also accompanies the assessment order passed in exercise of jurisdiction vested in the prescribed authority under Section 31of 'the Act' for the financial year 2011-12.

It is because a precondition of deposit of 50% of the tax assessed has been imposed by the appellate authority for stay of the demand raised, vide order dated 26.02.2019 that complaining of the conditions put to be onerous, the petitioner is before this Court.

The prayer is opposed by the learned counsel appearing for the State in reference to the discretionary power vested in the appellate authority under Rule 46 (4)(iii) of the Bihar Value Added Tax Rules framed under 'the Act', whereby the appellate/revisional authority have been allowed a discretion on the terms and conditions to be set up for the purpose of grant of *ad interim* stay on realization of the tax amount or interest.

It is not in dispute that the petitioner filed appeal in accordance with the stipulations present.

While complaining on the conditions, it is submitted by Mr. Bhardwaj that the admitted tax amount has already been deposited by the petitioner for the financial year in question. He further submits that a reassessment in exercise of jurisdiction under Section 31 has already taken place for raising the demand and against which the petitioner has taken recourse to the statutory remedy of appeal.

It is stated that even when such proceedings are pending consideration before the appellate authority, that acting on a judgment of Supreme Court rendered in the case of **State of Punjab Vs. Nokia India Private Limited**, reported in **(2014) 16 Supreme Court Cases 410** that a 2nd reassessment was carried out which has resulted in the order(s) impugned at Annexure-4 (series) to the writ petition which also accompanies a demand notice.

According to Mr. Bhardwaj while the 2^{nd} reassessment is not permissible that the petitioner has already deposited the admitted tax amount and yet subjected to two reassessment proceedings which are subject matter of appeal after complying with the statutory requirements, the conditions put, are in the nature of compulsory extraction pending adjudication.

We have heard Mr. Bhardwaj in support of the prayer and learned counsel for the State in opposition thereto and in the nature of the circumstances existing in the matter in hand, we, after taking note of the discretionary jurisdiction vested in the appellate authority under rule 46(4)(iii), to impose terms and conditions for grant of interim stay, are of the opinion that the statutory requirements would be met by modifying the deposit of 50% of the tax assessed, so directed by the appellate authority, to the extent of tax amount assessed excluding the interest levied. Should the petitioner deposit 50% of the tax amount excluding the interest amount levied as per the demand raised by 26th March, 2019, the balance amount which is subject matter of assessment order-cum-demand notice impugned in the writ petition, would remain stayed pending disposal of the appeal.

The writ petition is allowed with the observations/directions above.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Anjula/skpathak

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.03.2019
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