IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7692 of 2019

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Progressive Construction Limited a Company registered under the Companies Act, 1956 having its registered office at 7th Floor Raghav Ratna Towers Chirag Ali Lane Abids Hyderabad and branch office at opp. Kagharia Mela Ground, Vill and P.O. Forbesganj, District Araria through Accounts Manager Nageswara Rao Korrapati, Son of Late Seshaiah, Resident of 3-94 P O K. Takkellapadu, P.S. N.G. Padu Kothakota, District- Prakasam, Andhra Pradesh.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of State Taxes, Bihar, Patna having its office at Vikash Bhawan, Bailey Road, Patna.
2. Joint Commissioner of Commercial Taxes, (Appeal), Central Division, Patna.
3. Asst. Commissioner of State Taxes, Patliputra Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.D.V. Pathy, 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 : 13-05-2019

Heard learned counsel for the parties.

The petitioner is aggrieved by the order bearing Memo No. 700 dated 29.01.2019 whereby the appeal has been rejected because the petitioner in compliance of the stipulation present in Section 72(2) of the Bihar Value Added Tax Act, 2005 has not deposited 20% amount as appeal fee in its entirety. This matter was earlier heard by this Court on 18.04.2019 and it is bearing note of the submission of Mr. D.V. Pathy that the appeal was a second round proceeding and in the earlier round the petitioner had already deposited 20% as an appeal fee that we put the Commercial Tax Department on notice as to how they could realise an appeal fee twice for the same matter in contest. It is thereafter that the affidavit is filed which also encloses an order of the Appellate authority, Central Division, Patna dated 09.05.2019 wherein it is intimated that as against an appeal fee of Rs. 38,24,578/- which was 20% of the disputed tax amount the petitioner had deposited an amount of Rs. 22,87,516/- through Challan dated 29.07.2016 but for the remaining amount of the appeal fee of Rs.15,37,062/- the petitioner tried to explain through deposits made in different circles. It is since the petitioner did not deposit the required balance fee that the appeal was rejected.

We have heard learned counsel for the parties and we have perused the records and bearing note of the submission made by Mr. Pathy to contest the order dated 29.01.2019 by submitting that the appeal fee had already been deposited which fact is not correct rather the petitioner was found short on deposit of appeal fee and his plea of adjustment had been rejected, we do not find any infirmity in the direction of the appellate authority to ask the petitioner for deposit of the appeal fee because admittedly no appeal fee had been deposited in the earlier round as specifically stated by the respondents in their counter affidavit filed today at paragraph 6 of the counter affidavit.

In such view of the matter, we allow the petitioner to deposit the balance amount of appeal fee as reflected in the order of the Additional Commissioner placed on record at Annexure- A dated 09.05.2009 i.e Rs. 15,37,062/- within a period of 4 weeks from today and on such deposit being made, the appellate authority shall modify the order dated 29.01.2019 accordingly to consider and dispose of the appeal on its own merits but failure of the petitioner to abide by the directions herein, would not entitle him to the relief given hereinabove.

With the directions and observations above, we allow the writ petition limited to the extent above.

(Jyoti Saran, J)

(Anjani Kumar Sharan, J)

Bibhash/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.05.2019
Transmission Date	NA