IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7601 of 2019

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Pravin Electricals Pvt. Ltd. having its registered office at E-5/2, First Floor, Highland Park, Jai Shastri Nagar Mulund Colony, Mulund (W), Mumbai through its General Manager Rajendra Katdare Son of Late W.C. Katdare Resident of 202 C-3, 2nd Floor Swastik Park Azad Nagar, Near Bramhand, Kolshet, Thane West, Thane- Maharastra.

... ... Petitioner

Versus

1. The State of Bihar through Commissioner of State Tax, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Addl. Commissioner of State Tax (Appeal), Central Division, Patna.
3. Dy. Commissioner of State Tax, Special Circle, Patna.

... ... Respondents

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Appearance :

For the Petitioner/s : Mr. D.V.Pathy, Adv.
Ms. Manju Jha, 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 ORDER

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

2 19-04-2019 Heard Mr. D.V.Pathy, learned counsel for the petitioner and Mr. Vikash Kumar, learned SC-11, for the State.

In the nature of the order that we propose to pass we do not need to delve into the merits of the case. Suffice it to say, that the statutory appeal filed by the petitioner under the Bihar Value Added Tax Act, 2005, is not being heard by the Appellate Authority i.e. respondent no.2, Addl. Commissioner of State Tax (Appeal), Central Division, Patna because he directs for payment of 40% of the tax amount and 30% of penalty and interest which comes to about 37.53% of the disputed tax amount, for the purpose of interim stay.

It is not in dispute that the petitioner has already deposited 20% of the appeal amount as mandated under section 72(2) of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as 'the Act'). As regarding the amount in dispute, it is the submission of Mr. Pathy that the goods in question have already suffered tax at the entry point under the provisions of the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1993 and the Rules framed thereunder and acknowledgment of which is present at Annexure 5 which is to the tune of about 1.74 crores which is far beyond the amount so demanded by the Appellate Authority.

The position is not disputed as regarding deposit of the entry tax amount and thus, the position is whether in addition to this amount, the petitioner is at all liable to deposit any further tax. It is not in dispute that the entry tax levied on the goods in question at the time of entry in the State has been discharged at the hands of the South Bihar Power Distribution Company Ltd. It is also not in dispute that this amount of entry tax suffered by the goods in question is more than the amount demanded by the Appellate Authority in the order dated

13.3.2019 as reiterated on 25.3.2019. We thus by following the order of this Court rendered in the case of **M/s Kanhaiya Traders v. the State of Bihar & ors.**, since reported in 2016 (3) PLJR 205, direct the Appellate Authority, respondent no.2 to dispose of the appeal on its merits within four weeks of the next date fixed in appeal i.e. 13.6.2019 without coercing the petitioner to any further deposit and until such disposal, let there be no coercive demand in respect of the disputed amount in question as against the petitioner. As a consequence, the attachment order, if any, of the Bank account of the petitioner, is set aside.

As a result, the order(s) issued vide Memo No. 814 dated 13.3.2019 as extended vide order bearing Memo No. 862 dated 25.3.2019 at Annexures 2 and 4 respectively stand modified to that extent.

The writ petition is allowed with the directions above.

(Jyoti Saran, J)

(Anjani Kumar Sharan, J)

Surendra/-

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