# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Civil Writ Jurisdiction Case No.6775 of 2020**

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Lumbani Beverages Private Limited, a company incorporated under the provisions of the Companies Act and having its office at H- 2, EPIP, Industrial Area, Hajipur, Vaishali, through its Chief Executive Officer, Ganesh Prasad Singh, aged about 73 years (Male), Son of Late Yadunandan Singh, resident of Road No. 2, Sai Path, Mahesh Nagar, P.S. Patliputra, District Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Commercial Taxes Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna-800001.
2. The Commissioner, Commercial Taxes Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna- 800001.
3. The Additional Commissioner, Commercial Taxes Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna- 800001.
4. The Deputy Commissioner of Commercial Taxes, Hajipur Circle, Hajipur, Bihar.

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr.Suraj Samdarshi, Advocate |
| For the Respondent/s | : | Mr. Vikash Kumar, SC 11 |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**
**and**
**HONOURABLE MR. JUSTICE S. KUMAR**
**ORAL JUDGMENT**
**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 18-12-2020**

Petitioner has prayed for the following relief(s):

> i) To issue an appropriate writ, order or direction in the nature of Certiorari for quashing order no. 14 dated 09.12.2019

passed by the Commercial Taxes Tribunal, Bihar Patna, in Appeal Case no. PT-30/2018 whereby and where under the well-founded miscellaneous revision application filed by the petitioner under section 73A(3) of the Bihar Value Added Tax Act 2005 has been rejected merely on the ground that 20% of the disputed amount has not been deposited.

ii) Consequent to grant of relief no (I) to issue a further appropriate writ, order or direction for restoring Appeal Case no. PT- 30/2018 to its original record and to direct the Commercial Taxes Tribunal to dispose of the same in accordance with law.

iii) This Hon'ble Court may further adjudicate and hold that the order of the Commercial Taxes Tribunal rejecting the miscellaneous revision application filed by the petitioner under section 73 A (3) of the Bihar Value Added Tax Act 2005 on the ground that 20% of the disputed amount has not been deposited is completely unjust, illegal and de-hors the provisions of the Bihar Value Added Tax Act, 2005.

iv) This Hon'ble Court may further adjudicate and hold that the Commercial Taxes Tribunal Patna, erred in treating the application of the petitioner as an appeal and compelling the petitioner to deposit 20% of the alleged disputed amount.

v) This Hon'ble Court may further adjudicate and hold that the since there was no demand of tax or any tax liability of the petitioner, therefore there was no need to deposit 20% of the alleged disputed amount.

vi) To grant any other relief or reliefs for which the petitioner is found entitled in the facts and circumstances of the case."

The impugned order dated 09.12.2019, passed by Respondent No. 2, namely the Commissioner, Commercial Taxes Tribunal, Bihar, Patna in Appeal Case No. P.T. -30/2018, whereby the petitioner's application so filed under Section 73A (3) of the Bihar VAT Act, 2005 has been rejected on the ground of non-deposit of 20% as pre-deposit tax of the amount in dispute.

In our considered view, the authority has committed an error, jurisdictional in nature, inasmuch as the application preferred was in the nature of a revision petition and not an appeal. There is no requirement of pre-deposit insofar as the application for revision is concerned. Whether the said application was otherwise maintainable or not is another issue, but that is not the ground weighing with the authorities in forming their opinion in dismissing the application.

As such, on this short ground alone, the impugned order dated 09.12.2019, passed by Respondent No. 2, namely the Commissioner, Commercial Taxes Tribunal, Bihar, Patna in

Appeal Case No. P.T. -30/2018 is quashed and set aside and the matter remanded to the authority, i.e. the Commissioner, Commercial Taxes Tribunal, Bihar, Patna for consideration afresh on merits within a period of three months.

Petitioner is directed to appear before the Authority concerned on 15.01.2021.

It stands clarified that the proceedings, during the time of current Pandemic- Covid-19 shall be conducted through digital mode, unless the parties otherwise mutually agree to meet in person i.e. physical mode.

Equally, liberty is reserved to the petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law.

We are hopeful that as and when petitioner takes recourse to such remedies, as are otherwise available in law, before the appropriate forum, the same shall be dealt with, in accordance with law and with reasonable dispatch.

Liberty reserved to the petitioner to approach the Court, if the need so arises subsequently on the same and subsequent cause of action.

We have not expressed any opinion on merits.

The petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, also stands disposed of.

**(Sanjay Karol, CJ)**

**( S. Kumar, J)**

DKS/-

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| **AFR/NAFR** | |
| **CAV DATE** | |
| **Uploading Date** | 21.12.2020 |
| **Transmission Date** | |