IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14965 of 2017

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Valvoline Cummins Private Ltd., A company incorporated under the Companies Act, 1956, having its registered office at 3rd Floor, Vipul Plaza, Suncity, Sector 54, Gurgaon- Haryana 122003 and its Circle Office at Muza Kumhrar Paragana, Azimabad Plot No. 337, Thana No. 12, P.O. and P.S. Sultanganj, Patna, Bihar through its authorized representative/signatory Sri Dinesh Kumar More, son of Shri Rameshwar Prasad More, Durga Vihar Apartment, Flat No. 3C, SP Verma Road, Post GPO, P.S. Gandhi Maidan, Patna

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner-cum-Principal Secretary, Commercial Taxes, Vikas Bhawan, Bailey Road, Patna- 800 001
2. Commissioner of Commercial Tax, Patna, Bihar.
3. Joint Commissioner of Commercial Taxes (Appeals) Central Division, Patna.
4. The Commercial Tax Officer, Special Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Brisketu Sharan Pandey, Advocate

For the Respondent/s : Mr.Vikash Kumar-SC-11

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-02-2020

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. Petitioner has prayed for the following reliefs:-

"(i) For issuance of a writ of certiorari, or a writ in the nature of certiorari or any other appropriate writ, order or direction calling for the records and proceedings of the case, and after going into the legality, validity and propriety thereto to quash, delete and/or set aside impugned order dated 31.07.2017 to the extent it is against petitioner and subject matter of present writ application and/or;

(ii) Issuance of writ of mandamus directing the respondents that excess Entry Tax paid by the petitioners at the insistence of the department, be adjusted against alleged short payment of VAT liability, alternatively be refunded to the petitioner as the respondents have themselves admitted excess payment of Entry Tax.

(iii) Issuance of a writ of mandamus, or a writ in the nature of mandamus, or any other appropriate writ, order or direction that no coercive steps for recovery of the amount in dispute shall be undertaken pending disposal of present writ application and/or IA Application in present Writ Application against impugned order dated 31.7.2017 which has given rise to the present tax demand which department seeks to recover by taking recourse to coercive measures, and/or;

(iv) Issuance of writ of prohibition or any other appropriate writ, order or direction, directing the respondents to desist from enforcing and/or acting in furtherance to the said impugned order dated 31.7.2017 pending disposal of present writ application and/or IA Application in present Writ Application filed against said order, and/or;

(v) Ad-interim relief in terms of prayer above”

3. Learned counsel for the petitioner states that petitioner does not intend to press the present petition for the reason that he wants to approach the authorities for venting out his grievances. In so far as the issue of deposit of outstanding amount of tax or dues are concerned, he wants to go for settlement in terms of the Bihar Settlement of Taxation Disputes Act, 2019. Also, in that regard, he shall file an application within a period of two weeks and comply with the said provisions/scheme/rules. If the petitioner fails to do so, it would be open for the Department to recover the amount, impugned in the instant writ petition, so raised vide Annexure-P/1 series.

4. Petitioner is permitted to take recourse to such

remedies.

5. In so far as the issue of refund of the excess amount so deposited is concerned, which pertains to the years 2010-2011, learned counsel states that the petitioner shall represent to the authorities for refund thereof.

6. Shri Vikash Kumar, learned Standing Counsel appearing on behalf of the respondents, has no objection to the same, save and except that both the exercises should be carried out simultaneously and not dependent upon each other, to which learned counsel for the petitioner has no objection. In fact, he agrees for the same.

7. Statement accepted and taken on record.

8. This Court is hopeful that with the petitioner approaching the authority, the application for refund shall be considered and decided, strictly in accordance with law, expeditiously and preferably within a period of three months. However, we clarify that the outcome of the said application shall have no bearing whatsoever on the process to be initiated by the petitioner under the provisions of the Bihar Settlement of Taxation Disputes Act, 2019. Still further, it is clarified that if the petitioner fails to take recourse to the remedies of settlement under the said statute, it shall be open for the State/Authorities

to recover the amount/dues in terms of Annexure-P/1 series.

9. The petition stands disposed of in the aforesaid terms.

(Sanjay Karol, CJ)

(S. Kumar, J)

P.K.P./-Utkarsh

AFR/NAFR	
CAV DATE	
Uploading Date	26.02.2020
Transmission Date	