IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20526 of 2016

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Kumar Mobile, a partnership concern having its office at Gola Road, P.O. + P.S. Samastipur through its partner Amar Kumar, Son of Shri Arvind Kumar Singh, resident of Adarsh Nagar, P.O. P.S. Samastipur, District - Samastipur

... ... Petitioner/s

Versus

1. The State Of Bihar through The Commissioner of Commercial Taxes, Bihar, Patna having its office at Vikas Bhawan, Bailey Road, Patna
2. Commercial Taxes Tribunal, Bihar Patna through its Secretary having its office at Anta Ghat, Patna
3. Assistant Commissioner of Commercial Taxes, Samastipur Circle, Samastipur

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.D.V.Pathy, Advocate
For the Respondent/s : Mr.Pushkar Nr. Shahi- AAG 6

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

Date : 16-12-2020

Petitioner has prayed for the following relief(s):

> "(i) the order dated 24.08.2015 (as contained in Annexure-5) passed by the respondent no.2 in appeal case no.65/2014 for the period 2005-06 directing payment of a sum equal to 20% of the amount in dispute as condition precedent for entertainment of appeal be quashed.

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> (ii) the respondent no.2 be directed to hear and decide the appeal on merits."

Shri D.V. Pathy, learned counsel for the petitioner, states that the decision dated 07.01.2016, rendered by a co-ordinate Bench of this Court in C.W.J.C. No. 14655 of 2015, titled as Idea Cellular Infrastructure Services Limited Vs. The State of Bihar& Ors., has attained finality, inasmuch as none has challenged the correctness thereof at any point of time. The operative portion of the said judgment reads as under:

> "We may however, at this stage, refer to the observations of the Tribunal that the benefit of grant of waiver as provided under Section 73 (2) of the Act is only available to those who are able to show that they have no capacity to deposit the amount in dispute. According to us, that cannot be a sole ground for either allowing or denying the said benefit and all the other relevant factors which come into play while considering the grant of any interim order of stay ought to be considered by the Tribunal while deciding any such application before it."

From the impugned order dated 24.08.2015, passed in appeal case No. DR-65-66 of 2014, we notice that petitioner's application for waiver of pre-deposit of the amount of tax, prior to the hearing of the appeal on merits, stands rejected.

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We are in agreement with the submissions made by the learned counsel that the order is cryptic and unreasoned and, as such, on this short ground alone, quash and set aside the impugned order dated 24.08.2015, passed in appeal case No. DR-65-66 of 2014, with the directions to the petitioner to appear before the authority on 16.01.2021, on which date parties shall place additional material, if so required and desired.

The authority shall consider and decide the application, more so in the light of the binding precedent, as far as applicable, including one in C.W.J.C. No. 14655 of 2015, titled as Idea Cellular Infrastructure Services Limited Vs. The State of Bihar& Ors. (supra).

Order assigning reasons to be passed by the authority shall be supplied to the parties.

Liberty reserved to assail the same, if so required and desired.

In the event of the petitioner complying with the order passed by the authority, we direct the authority to hear and decide the appeal on merits, expeditiously and preferably within the current financial year i.e. 2020-21.

The writ petition stands disposed of in the above terms.

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The interlocutory application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

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Uploading Date	21.12.2020
Transmission Date	

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