IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19494 of 2021

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M/s Linde Engineering India Private Limited having its registered office at Linde House, Near Nilamber Circle, Vasna Gotri Road, Vadodara 391410, through authorized signatory Chandergupt Jain, aged about 46 years (M), Son of Rishi Kumar Jain, Resident of A-1-60, Sidhartha Bunglow, Opposite Urmi School, Sama Salwi Road, Vemali Eme, P.O. - Nizampura, P.S. - Harni, Vadodara, State - Gujarat.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner - Cum- Secretary Commercial Tax Department, Government of Bihar, Patna.
2. The Commissioner - Cum- Secretary, Commercial Tax Department, Government of Bihar, Patna.
3. The Joint Commissioner of Commercial Taxes, Begusarai Circle, Begusarai.
4. The Deputy Commissioner of Commercial Taxes, Begusarai Circle, Begusarai.

... ... 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

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

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 29-11-2021

Petitioner has prayed for the following relief(s):-

> (i) For quashing the order dated 29.08.2017 (Annexure-P/1) issued by Commercial Tax Tribunal, Bihar whereby and whereunder the Revision Case No. DR-70/2012 has been

dismissed in want of appearance of the counsel for the the counsel for the appellant/revision Petitioner before the aforesaid Tribunal.

(ii) For quashing the order dated 03.02.2012 (Annexure-P/2) passed by the Commissioner of Commercial Taxes, Bihar, Patna whereby and whereunder the revision petition preferred by the petitioner against the order dated 24.12.2010 has been dismissed and the demand raised by the Deputy Commissioner of Commercial Taxes ("DCCT") Begusarai (Respondent No.4) affirmed the scrutiny order dated 24.12.2010.

(iii) For quashing the scrutiny order dated 24.12.2010 (Annexure-P/3) and the demand notice issued through Form-N-VII dated 31.12.2010 (Annexure-P/4) issued by the DCCT, Begusarai Circle (Respondent No. 4) whereby and whereunder a tax liability of VAT of Rs. 2,05,04,743/- has been assessed and accordingly a demand worth Rs. 1,87,04,743/- has been raised against the petitioner and subsequently through various modes of recovery including special mode of recovery through Bank Account attachment of the petitioner the entire money has been recovered by the Respondent Commercial Tax Department.

(iv) For refund of Rs. 2,05,04,743/- to the petitioner (with appropriate interest thereon) which has been coercively recovered from the petitioner by resorting to various modes of recovery through attachment/challan towards the demand raised in furtherance of the assessment done by the DCCT, Begusarai Circle, Begusarai and;

(v) For holding that the petitioner was never communicated about the disposal of the appeal preferred by it before the tribunal, and the Learned Tribunal has failed to inform the petitioner regarding the disposal of the appeal which was obligatory on its part in terms of Section 73(5) of Bihar VAT Act, 2005.

(vi) Any other relief or reliefs which the petitioner may be found entitled to."

Petitioner had filed appeal before the Tribunal, which was dismissed for default due to non-appearance of learned counsel for the appellant.

It has been brought to the notice of this Court by Shri Vikash Kumar, learned Standing Counsel-11, that there is provision under the Bihar Commercial Taxes Tribunal Regulation, 1979 itself for filing restoration petition, if the appeal has been dismissed for default on the ground of non-appearance of the learned counsel for either of the parties.

The relevant provision reads as under:-

"24. Restoration of applications decided ex-parte.- (1) If any of the parties was absent on the day of hearing, either preliminary or final, and the application was heard and decided ex-parte, the party

> concerned may apply for restoration of the application and if the party satisfies the Tribunal that he had no notice of the date of hearing or that he was prevented by any sufficient cause from appearing when the application was called on for hearing the Tribunal may make an order setting aside the earlier order and restoring the application to its file and number on such terms as it thinks fit:
>
> Provided that where the other party had not appeared at the hearing of the application, such party shall be given notice and an opportunity of being heard before the order for restoration is made.
>
> (2) An application for restoration of the application dismissed for default or disposed ex-parte shall be made within thirty days from the date of the order."

In view of the aforesaid, petitioner is granted liberty to file restoration application before the Bihar Commercial Taxes Tribunal for restoration of his appeal, which has been dismissed for default and if any such restoration application is filed by the petitioner the delay in filing such restoration application shall be condoned and Appeal / Revision be restored and Tribunal shall decide the appeal/revision on its own merit after affording reasonable opportunity to all the concerned parties.

With the aforesaid observation and liberty, the present petition is disposed of.

Interlocutory application, if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/Rajiv

AFR/NAFR	
CAV DATE	
Uploading Date	03.12.2021
Transmission Date	