IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1845 of 2023

MRF Limited a company incorporated under the Companies Act, 1956 having its registered office at 2nd Floor, Emarat Al Harmain, Bank Road, Patna through its authorized signatory James T M (aged about 45 years) son of Mathai resident of Thadathil House, Vazhithala P.O. Thodupuzha at present residing at Flat No. 103 Sharda Apartment, Road No. 3, New Patliputra Colony, Patna 800013.

... ... Petitioner/s

Versus

1. 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 having its office at Pant Bhawan, Boring Road, Patna.
3. Asst. Commissioner of State Tax, Patliputra, Central, Bihar.

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr. D.V.Pathy, Advocate

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

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 14-02-2023

The present writ application under Article 226 of the Constitution of India has been filed seeking quashing of an order dated 12.01.2023 passed by the Additional Commissioner of State Tax (Appeal), Central Division, Patna, in Appeal Case No. ST/PR-63/2022-23 for the period 2016-17 directing payment of 35% of disputed demand of tax and 20% of the interest by 25.01.2023. The petitioner has preferred the aforesaid appeal against an order passed under Section 31(1) of the Bihar Value Added Tax Act, 2005 by the Assistant Commissioner of State Tax, Patliputra Circle, Patna.

2. It is manifest that the said order has been passed on a stay application filed by the petitioner before the appellate authority while assailing an order passed by the Assistant Commissioner of State Tax, Patliputra Circle, Patna dated 30.09.2022.

3. It is evident on plain reading of the order that the same has been passed in accordance with the provision under Rule 46 (4)(iii) of the Bihar Value Added Tax Rules, 2005 which reads as under:-

> "The appellate or the revisional authority, as the case may be, may, in his discretion, by an order in writing, stay realisation of the amount of tax or interest, part or whole, as the case may be, in dispute, on such terms and conditions as he may deem fit and proper in the facts and circumstances of the case."

4. Mr. D.V.Pathy, learned counsel appearing on behalf of the petitioner, has argued that the impugned order of the appellate authority passed on appellant's prayer for stay of the demand notice, is non-speaking and the same has been

passed without duly considering the petitioner's application for stay of the demand.

5. Language of Clause (iii) of sub-rule (4) of Rule 46 is unambiguous. It confers upon the appellate authority or the revisional authority under the Act, a discretion to stay realisation of amount of tax or interest, part or whole, as the case may be, in dispute, on such terms and conditions as he may deem fit and proper in the facts and circumstances of the case.

6. Mr. D.V.Pathy, learned counsel, has submitted that the expression 'discretion' used in clause (iii) of sub-rule (4) of Rule 46 should have been exercised judiciously by the appellate authority and not in a mechanical manner.

7. We have carefully perused the impugned interim order of the appellate authority. The appellate authority, in our considered opinion, on due application of clause (iii) of sub-rule (4) of Rule 46, has stayed the realisation of tax with certain conditions as mentioned therein which are neither unjust nor onerous.

8. We do not find any legal infirmity requiring this Court's interference.

9. This writ application is, in our view, devoid of

merit and accordingly, dismissed.

(Chakradhari Sharan Singh, ACJ)

(Madhuresh Prasad, J)

Sunil/-

AFR/NAFR	
CAV DATE	
Uploading Date	18.02.2023
Transmission Date	