IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5932 of 2021

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MCL- BEL- Bihar (JV) A Joint Venture having its registered office at Monte Carlo House, Near Sindhu Bhawan Road, Bodakdev, Ahmedabad (Gujarat)- 380058 and local office in the State of Bihar Through its authorised signatory namely Manish Kumar, Manu Bhai Mevada male aged about 38 years son of Manu Bhai Mevada resident of Limbadi Vas, Brahman Wada, Mehsana, Gujarat- 384215 (Financial Year 2016-2017).

... ... Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary Cum Commissioner Department of State Taxes, New Secretariat, Bailey Road, Patna.
2. The Joint Commissioner of State Taxes Patliputra State Tax Circle, Patna.
3. The Assistant Commissioner of State Taxes Patliputra State Tax Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Gautam Kumar Kejriwal, Advocate
		Mr. Alok Kumar Jha, Advocate
For the Respondent/s	:	Mr. Vivek Prasad, GP 7

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

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/Hon'ble Judges through Video Conferencing from their residential offices/residences. Also the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 01-07-2021

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

(a) For issuance of a writ in the nature of certiorari for quashing of the order dated 06.03.2020 passed by the respondent No. 3 under section 41(6) of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as "the act" for short) for the financial year 2016-2017 on grounds of the same being ex-parte and as such violative of the principles of natural justice;

(b) For issuance of a writ in the nature of certiorari for quashing of the order dated 12.03.2020 passed by the respondent No. 3 whereby the petitioner's plea has been rejected without any application of mind;

(c) For further holding and a declaration that in light of the principle settled by the apex court in the matter of **2008-9-SCC-191 (State of A.P. Vs. L & T)** the relationship between the employer Department, the petitioner (main contractor) and the subcontractor will constitute one taxable event and the petitioner having already been subjected to advance tax deduction at source in terms of section 41 of the act by the employer Department in the State of Bihar, the impugned demand of penalty imposed under section 41(6) of the act is misconceived and directly in teeth of the said proposition of law settled by the apex court;

(d) For further holding and a declaration that in an execution of the work contract by a subcontractor working under the contract terms with the main contractor any deduction of tax from the bills of subcontractor would constitute double taxation impermissible in law and violative of Article 265 of the Constitution of India;

(e) For further issuance of a writ or order or direction restraining the respondents from recovery of the penalty determined in terms of the impugned order dated 06.03.2020 from the petitioner;

(f) for grant of any other relief or reliefs to which the petitioner is found entitled to in the facts and circumstances of the case.

It is brought to our notice that vide impugned order dated 06.03.2020 passed by the Respondent No. 3 namely the Assistant Commissioner of State Taxes, Patliputra State Tax Circle, Patna in Case No. 10051406024, under Section 41(6) of Bihar Value Added Tax Act, 2005 for the period 2016-2017 on the ground is ex parte in nature and also vide order dated 12.03.2020, passed by the same authority the petitioner's plea has been rejected without any application of mind.

Learned counsel for the Revenue, states that he has no objection if the matter is remanded to the Assessing Authority for deciding the case afresh. Also, the case shall be decided on merits. Also, during pendency of the case, no coercive steps shall be taken against the petitioner.

Statement accepted and taken on record.

However, having heard learned counsel for the parties as also perused the record made available, we are of the considered view that this Court, notwithstanding the statutory remedy, is not precluded from interfering where, *ex facie*, we form an opinion that the order is bad in law. This we say so, for two reasons- (a) violation of principles of natural justice, i.e. Fair opportunity of hearing. No sufficient time was afforded to the petitioner to represent his case; (b) order passed *ex parte* in nature, does not assign any sufficient reasons even decipherable from the record, as to how the officer could determine the amount due and payable by the assessee. The order, *ex parte* in nature, passed in violation of the principles of natural justice, entails civil consequences. As such, on this short ground alone, we dispose of the present writ petition in the following mutually agreeable terms:

(a) We quash and set aside the impugned order dated 06.03.2020 passed by the Respondent No. 3 namely the Assistant Commissioner of State Taxes, Patliputra State Tax Circle, Patna in Case No. 10051406024, under Section 41(6) of Bihar Value Added Tax Act, 2005 for the period 2016-2017 and order dated 12.03.2020, passed by the same authority;

(b) We accept the statement of the petitioner that ten per cent of the total amount, being condition prerequisite for hearing of the appeal, already stands deposited. If that were so, well and good. However, if the amount is not deposited for whatever reason(s), same shall be done before the next date;

(c) Further the petitioner undertakes to additionally deposit Rs. 50,00,000/- (fifty lacs) before the Assessing Officer. This shall be done within four weeks.

(d) This deposit shall be without prejudice to the respective rights and contention of the parties and subject to the order passed by the Assessing Officer. However, if it is ultimately found that the petitioner’s deposit is in excess, the same shall be refunded within two months from the date of passing of the order;

(e) We also direct for de-freezing/de-attaching of the bank account(s) of the writ-petitioner, if attached in reference to the proceedings, subject matter of present petition. This shall be done immediately.

(f) Petitioner undertakes to appear before the Assessing Authority on 9th of August, 2021 at 10:30 A.M., if possible through digital mode;

(g) The Assessing Authority shall decide the case on merits after complying with the principles of natural justice;

(h) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

(i) During pendency of the case, no coercive steps shall be taken against the petitioner.

(j) The Assessing Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(k) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(l) The Assessing Authority shall decide the case on merits expeditiously, preferably within a period of two months from the date of appearance of the petitioner;

(m) Liberty reserved to the petitioner to challenge the order, if required and desired;

(n) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(o) We are hopeful that as and when petitioner takes recourse to such remedies, before the appropriate forum, the same shall be dealt with, in accordance with law, with a reasonable dispatch;

(p) We have not expressed any opinion on merits and all issues are left open;

(q) If possible, proceedings during the time of current Pandemic [Covid-19] be conducted through digital mode;

The instant petition sands disposed of in the aforesaid terms.

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

Learned counsel for the respondents undertakes to communicate the order to the appropriate authority through electronic mode.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	07.07.2021
Transmission Date	