IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 9245 of 2021

Pidillte Industries Limited, a company incorporated under the provisions of the Companies Act and having its office at Plot no 413 and 425, Near Rajdhani Petrol Pump, Sabalpur, PO Madhav Mills, P .S. Didarganj, Patna City, Patna, through its authorised signatory Sunil Kumar Poddar, aged about 44 years (Male), Son of Late Shankar Lal Poddar, resident of Flat No. 75, Ashoka Place, A Block, Exhibition Road, P .0. Patna Sadar, P .S. Gandhi Maidan, District Patna.

…. ...... **Petitioner**

VERSUS

1. The State of Bihar, through the Commissioner, Commercial Taxes Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna - 800001.

2. The Commissioner, Commercial Taxes Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna - 800001.

3. The Additional Commissioner, Commercial Taxes Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna - 800001.

4. The Joint Commissioner of Commercial Taxes, Central Division, Bihar.

5. The Assistant Commissioner of Commercial Taxes, Patna Special Circle, Patna

.... Respondents

Appearance :

For the Petitioner/s	:	Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Mr. Ranjan Prakash, Advocate Mr. Piyush Ranjan, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, S.C. 11

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
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(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 : 07-07-2021

Petitioner has prayed for the following relief(s):

"i) To issue an appropriate writ, order or direction in the nature of *certiorari* for quashing the order dated 31.12.2020 passed by the Assistant Commissioner State Tax, Special Circle Patna, pertaining to the year 2014 -2015, whereby and where under upon remand of the matter from Joint Commissioner, the Assistant Commissioner has imposed 'a tax liability of Rs. 53, 50, 324/- and also levied three times penalty of Rs. 1,60,50,572/- and interest of Rs. 54,57,330/- holding that goods worth Rs. 6,29,44, 983/- will attract value added tax at the rate of 13. 5%.

ii) To issue an appropriate writ, order or direction in the nature of *certiorari* for quashing the demand notice dated 31.12.2020 issued to the Petitioner in form NVIII by the Assistant Commissioner State Tax, Special Circle Patna.

iii) To issue an appropriate issue an appropriate writ, order or direction in the nature of *certiorari* for quashing audit objection of the Accountant General

(Audit), Bihar contained in memo no. RS-IV/46 dated 05.12.2016 on the ground that the same is *sans* any legal authority.

iv) During the pendency of this writ application to issue an appropriate writ, order or direction in the nature of mandamus commanding the Respondents not to take any coercive steps against the petitioner for the recovery of disputed tax amount, penalty and interest, especially considering the fact that the matter pertaining to charging of interest and penalty is pending before the Tribunal.

v) This Hon'ble Court may adjudicate and hold that the Accountant General has no authority/ power to raise any objection in a deemed assessment matter.

vi) This Hon'ble Court may adjudicate and hold that an order cannot be passed under section 31 of the Bihar Value Added Tax Act 2005 in a proceeding initiated under section 33 of the Bihar Value Added Tax Act 2005 on the basis of an audit objection raised by the Accountant General.

vii) This Hon'ble Court may further adjudicate and hold that the action of Commercial Taxes Officer in issuing a notice under section 31 of the Bihar Value Added Tax Act 2005 that too after initiation of proceeding under section 33 is bad in law?

viii) This Hon'ble Court may further adjudicate and hold that levy of interest and penalty in a demand arising out of difference in opinion regarding classification of product is arbitrary, illegal and void, that too when there is neither any shortfall in payment of tax admitted nor any concealment of sale or purchase in return.

ix) This Hon'ble Court may further adjudicate and hold that the respondents cannot shrug off their responsibility to decide the classification related dispute concerning the products of the petitioner.

x) This Hon'ble Court may further adjudicate and hold that the order of Assistant Commissioner State Tax, Special Circle Patna, imposing penalty and interest upon the petitioner is completely unjust, illegal and *de-hors* the provisions of the Bihar Value Added Tax Act, 2005 as the case of the petitioner is not covered under section 31 (2) and 39(4) of the Bihar Value Added Tax, 2005.

xi) This Hon'ble Court may further adjudicate and hold that penalty under section 31 (2) of the Bihar Value Added Tax, 2005 can only be levied when a dealer has either concealed, omitted or failed to disclose full and correct particulars of sale or purchase or input tax credit.

xii) This Hon'ble Court may further adjudicate and hold that interest under section 39(4) of the Bihar Value Added Tax, 2005 can only be levied when a dealer has a) wrongly claimed either the whole or part of his turnover as not taxable and, has consequently, paid lesser amount of tax than payable by him; or (ii) wrongly declared his turnover or any particulars thereof and thereby has reduced the amount of tax payable under this Act; or (iii) wrongly claimed input tax credit in excess of what he is entitled to under this Act.

xiii) This Hon'ble Court may further adjudicate and hold that since the petitioner has not concealed any particulars of sale/purchase, or wrongly declared its turnover, or wrongly claimed input tax credit, the levy of penalty and interest is not justified.

xiv) This Hon'ble Court may further adjudicate and hold that since the department has accepted the classification of goods by the Petitioner in its returns, the assessing officer cannot take a different opinion with regard to the same merely on the basis of an Audit Objection and treating the same to be sacrosanct.

xv) This Hon'ble Court may further adjudicate and hold that the petitioner should not be compelled to pay the requisite predeposit if the petitioner approaches the appellate authority once again for the same matter.

xvi) This Hon'ble Court may further direct the Respondents to decide on merits all pending cases of the petitioner relating to classification of goods decided on merits in a time bound manner.

xvii) This Hon'ble Court may further adjudicate and hold that from the facts and circumstances of the case, it is evident that the intention of the Respondents is not to decide the matter on merits.

xviii) To grant any other relief or reliefs for which the petitioner is found entitled in the facts and the circumstances of the case."

We are in agreement with the submission made by the petitioner that the practice adopted by the Appellate Authority in remanding the matter to the Assessing Authority, is neither in public interest nor in the attending circumstances warranted under the Statute.

As such, leaving all issues open, we dispose of the present petition in the following mutually agreeable terms:-

(a) We quash and set aside the impugned order dated 8th of August, 2018 (Annexure-7) passed by the Joint Commissioner of Commercial Taxes (Appeal), Central Division, Patna in ST/SL-484/2016-17 for the period 2014-15; and the appeal is restored to its original number and position.

(b) Petitioner undertakes to appear before the Appellate Authority on 16th of August, 2021 at 10:30 A.M., if possible through digital mode;

(c) We accept the statement of the petitioner that the petitioner shall comply with the condition of the provisions of Section 72(2) of the Bihar Value Added Tax Act, 2005 before the next date;

(d) This deposit shall be without prejudice to the respective rights and contention of the parties and subject to the order passed by the Appellate Authority. 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) The Appellate Authority shall condone the delay in filing the appeal and decide the appeal on merits after complying with the principles of natural justice;

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

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

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

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

(k) The Appellate Authority shall decide the appeal on merits expeditiously, preferably within a period of two months from the date of appearance of the petitioner, accounting for all the submissions made and documents/materials/decisions referred to and relied upon by the parties;

(l) The Appellate Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

(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)

Sujit/PKP-

AFR/NAFR	
CAV DATE	
Uploading Date	14.07.2021
Transmission Date	