IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17373 of 2021

The Best Towers Pvt Ltd. 103, Ground Floor, Surya Nanda Apartment, North of Hospito India, Buddha Colony, Patna through its Managing Director Pervez Ahmad, aged About 69 Years Male Son of Late Dr. Tahir Hussain, Resident of B-55, Ground Floor East), PCC, Kankarbagh, Patna-800020 (Bihar), P.O. Lohia Nagar, P.S. Kankarbagh District Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-Cum-Commissioner, Commercial Tax Department, Government of Bihar, Patna.
2. The Joint Secretary, Commercial Tax Department, Government of Bihar, Patna.
3. The Additional Commissioner, Commercial Tax Department, Bihar, Patna.
4. The Joint Commissioner, Commercial Tax Department, Bihar, Patna.West Division, Patna.
5. The Deputy Commissioner, Commercial Tax Department, Gandhi Maidan Circle, Patna.
6. The Assistant Commissioner, Commercial Tax Department, Gandhi Maidan Cercle, Bihar, Patna.
7. The Commercial Tax Officer, Gandhi Maidan Circle, Patna.
8. The Accountant General, Bihar.

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar, Advocate
Mr. Santosh Kumar, Advocate
Mr. Yogesh Kumar, Advocate
Mr. Ayush Kumar, Advocate

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

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJAN GUPTA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-10-2021

Petitioner has prayed for the following relief(s):

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i. For setting aside the order dated 01.02.2018, passed by Commercial Tax Officer, Gandhi Maidan Circle Patna, under the office of the Deputy Commissioner, Commercial Tax, Patna, whereby tax of Rs. 12,40,460.57, fine of Rs. 5,000 and interest of Rs. 10,84,541.61 has been imposed in exercise of jurisdiction conferred under Section 31 of the Value Added Tax on the basis of VAT audit without considering the order dated 01.06.2015, passed by the Commercial Tax Officer, Gandhi Maidan Circle, Patna, passed under Section 33 of the VAT on the basis of Audit report of the Accountant General, whereby on the same issues order was passed and the amount of tax were admittedly paid by the petitioner and hence the reissuance of order on the same point is completely without jurisdiction.

ii. For setting aside the demand notice dated 05.02.2018 for Rs. 23,30,000.02, issued against the petitioner in Form-N

(viii) u/s 25 and Section 39 of the Bihar Value Added Tax, 2005.

iii. For any other relief for which the petitioner may be deemed entitled to.

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Petitioner has prayed for setting aside the impugned order dated 1st of February, 2018, passed by Commercial Tax Officer, Gandhi Maidan Circle, Patna (Annexure-5) as also the demand notice in Form N-VIII under Section 25 and Section 39 of the Bihar Value Added Tax Act, 2005 dated 5th of February, 2018 (Annexure-6).

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 1st of February, 2018, passed by Commercial Tax Officer, Gandhi Maidan Circle, Patna (Annexure-5) as also the demand notice in Form N-VIII under Section 25 and Section 39 of the Bihar Value Added Tax Act, 2005 dated 5th of February, 2018 (Annexure-6);

(b) Further the petitioner undertakes to deposit twenty five per cent of the amount of the demand raised before the Assessing Officer. This shall be done within four weeks.

(c) 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;

(d) 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.

(e) Petitioner undertakes to appear before the Assessing Authority on 15th of November, 2021 at 10:30 A.M., if possible through digital mode;

(f) The Assessing Authority shall decide the case 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 case, no coercive steps shall be taken against the petitioner.

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

(l) The Assessing 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)

(Rajan Gupta, J)

P.K.P./Amrendra

AFR/NAFR	
CAV DATE	
Uploading Date	22.10.2021
Transmission Date	