IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17376 of 2021

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Birla Corporation Ltd. a Company Incorporated Under the Companies Act, 1956 having its Head Office at 9.1 R.N. Mukherjee Road,Kolkata, and Regional Office at 301-303Ashiana Towers, Exhibition Road Patna-800003 through its authorized Signatory Puneet Kumar Dubey (Male) aged about 32 Years) Son of Shri Vimal Kumar Dubey resident of Hanuman Nagar, Nai Basti, Near R.P. School and P.S. Kolgawa, Satna, Madhya Pradesh.

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner of State Tax, Bihar, Patna having its Office at Vikas Bhawan, Patna.
2. Joint Commissioner of State Tax, (Appeal) Central Division, Patna.
3. Dy. Commissioner of State Tax, Special Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.D.V.Pathy, Advocate
For the Respondent/s : Mr. Vikash Kumar, SC 11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE A. M. BADAR

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

3 28-10-2021 Petitioner has prayed for the following relief(s):-

i) the order dated 29.09.2018 (as contained in Annexure-4 series) passed by the respondent no. 3 charging interest and penalty on disallowance of transitional credit without taking notice of the available balances in both the electronic credit ledger and also the electronic cash ledger coupled with non-utilization of transitional credit claimed/brought forwarded without issue of a statutory notice under Section 73 of the Act be quashed.

ii) the order dated 15.12.2020 enhancing charge of interest and penalty without issue of notice and without consideration of the available balances coupled with non-utilization of transitional credit claimed/brought forward in both the electronic credit ledger and also the electronic cash ledger be quashed.

iii) the summary of the order (as contained in Annexure-4 series) dated 12.12.2018 in Form GST DRC-07 issued by the respondent no. 3 be quashed.

iv) For granting any other relief(s) to which the petitioner is otherwise found entitled to."

Shri Vikash Kumar, learned S.C.-11, states that the proceeding can be conducted through manual court.

In this view of the matter, as mutually agreed, we quash and set aside the impugned order dated 29.09.2018 as also 15.12.2020 for the reason that they are summary in nature and are unreasoned; resulting into civil consequences inasmuch as penalty stands imposed and the petitioner shall be subjected to penal consequences in the event of non-payment thereof. Thus, principles of natural justice stand vitiated.

As such, we dispose of the present writ petition in the following mutually agreeable terms:

(a) The petitioner shall appear before the Respondent

No. 3, namely, the Deputy Commissioner of State Tax, Special Circle, Patna on 01.12.2021 at 10:30 A.M.;

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

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

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

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

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

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

(h) The Assessing Officer shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

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

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

(k) 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;

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

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)

(A. M. Badar, J)

Sujit/Bhardwaj

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