IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18484 of 2021

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Monte Carlo Limited 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 deputy general manager (finance and accounts) namly Malay Shaileshbhai Viashnav male aged about 35 years, son of Shailesh Bhai Gajendralal Vaishnav resident of 202, Madhu Villa, CO O P Housing Society, Devkinagar, Devi Das Lane, Opposite Lotus Hospital, Borivali (West) Mumbai.

... ... 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 Principal Secretary cum Commissioner, Department of State Taxes, New Secretariat, Bailey Road, Patna.
3. The Assistant Commissioner of State Taxes, Patliputra Circle, Patna. (Financial Year 2015-2016- ET).

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Gautam Kumar Kejriwal, 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 JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-10-2021

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

(b) For issuance of a writ in the nature of certiorari for quashing of the order dated 27.03.2021 and the demand notice dated 23.07.2021 passed and issued by the respondent No. 3 under section 8 of the Bihar Tax On Entry Of Goods Into Local Areas (For Consumption Use Or Sale Therein) Act 1993 (hereinafter referred to as the Bihar entry tax act for short) read with section 31 (1) of the Bihar Value-Added Tax Act 2005 (hereinafter referred to as the Bihar VAT act for short);

(c) For issuance of a writ or order or direction restraining the respondents from taking any coercive action for recovery of the tax, interest and fine demanded in terms of the impugned order of assessment dated 27.03.2021 and the demand notice dated 23.07.2021 during the pendency of the present writ application and in case recovered then necessary direction be issued for refund of the same;

(d) For further holding and a declaration that the impugned demand notice issued against the petitioner is badly barred by limitation in terms of section 31 of the Bihar VAT act as the order of assessment pertains to the financial year 2015 – 2016;

(e) For further holding and a declaration that the impugned order of assessment is without jurisdiction in light of the law laid down by a division bench of this honourable court in the matter of Tata Projects Ltd Versus The State Of Bihar And Others as the same is based on audit objection report of the Comptroller and auditor general Bihar Patna;

(f) For further holding and a declaration that once the petitioner has deposited and paid the tax under Bihar VAT act on purchase of high speed diesel and other products from Indian oil Corporation limited Barauni no liability of entry tax in terms of section 3 (3) of the Bihar entry tax act would stand attracted in light of the law laid down by a division bench of this honourable court in the matter of Shell India Markets Ltd Versus The State Of Bihar And Others (order dated 31.07.2015 passed in CWJC number 7623 of 2015);

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

This petition has been filed for quashing of order dated 27.03.2021 and demand notice dated 23.07.2021 passed by the respondent no. 3 namely The Assistant Commissioner of State Taxes, Patliputra Circle, Patna in TIN(ET)-10050870295. The order is *ex parte* in nature.

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 27.03.2021 and demand notice dated 23.07.2021 passed by the respondent no. 3 namely The Assistant Commissioner of State Taxes, Patliputra Circle, Patna in TIN(ET)-10050870295.

(b) The petitioner undertakes to deposit 10% 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 30th 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 the 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)

(A. M. Badar, J)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	03.11.2021
Transmission Date	