IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20412 of 2021

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M/S S.P. Singla Construction Pvt. Ltd. having its office at 601, Kumar Tower, Boring Road, Patna through Nagendra Kumar Chaudhary (male) aged about 51 years, R/o G-1, Brahamsthan Gali, Jagdamba Palace, Sheikhpura Bagicha, Danapur, P.S.- Rupaspur, District - Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of State Tax, New Secretariat, Bihar, Patna.
2. The Commissioner of State Tax, Bihar, Patna.
3. The Deputy Commissioner of State Tax, Special Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mrs. Archana Sinha @ Archana Shahi, 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)

Date : 14-12-2021

Petitioner has prayed for the following relief(s):

> "i) To issue an appropriate writ/order/direction in the nature of Certiorari for quashing order dated 12.07.18 (Annexure-2) passed by respondent no.3 by which interest of Rs.88,92,972/- had been imposed under Section 8 Bihar Entry Tax read with Sec 31 of Value Added Tax;
>
> ii) To any other relief or reliefs for which the Petitioners is found entitled to in the facts and circumstances of the case."

The instant petition has been filed for quashing of the order dated 12.07.2018, as contained in Annexure-2, passed by respondent No.3, namely, the Deputy Commissioner of State Tax, Special Circle, Patna whereby interest of Rs.88,92972/- has been imposed under Section 8 of the Bihar Entry Tax read with Section 31 of the Value Added Tax Act.

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 12.07.2018, as contained in Annexure-2, passed by respondent No.3, namely, the Deputy Commissioner of State Tax, Special Circle, Patna**.**

(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 ten per cent of the amount of the demand raised 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 03.01.2022 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) The Assessing Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

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

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

(p) 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; and

(q) 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)

(S. Kumar, J)

Ranjan/Sanjay

AFR/NAFR	
CAV DATE	
Uploading Date	17.12.2021
Transmission Date	