

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1611 of 2020

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L Oreal India Pvt. Ltd. A-Wing, 8th Floor, Marathon Futurex, N.M. Joshi Marg, Lower Parel, Mumbai-400013 through Assistant Manager-Indirect Taxation namely Lokesh Kumar Gupta male aged about 27 years Son of Mahesh Kumar Gupta, Resident of Doongarpur, Dungarpur, Dausa, Lalsot, Rajasthan-303511

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Department of Customs Government of India, New Delhi.
2. The Commissioner of Customs and Central Taxes, Bihar, Patna.
3. The Superintendent of Customs, Land Customs Station, Raxaul.
4. The State of Bihar through the Secretary, Department of Commercial Taxes, Government of Bihar, Patna.
5. The Deputy Commissioner of State Taxes, Special Circle, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prakash Shah, Advocate Mr. Gautam Kumar Kejriwal, Advocate Mr. Rajan Mishra, Advocate
For the UoI	:	Dr. K. N. Singh, ASG Mr. Anshuman Singh, Sr. Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC-11

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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.)

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Date : 24-01-2022

The petitioner has prayed for the following relief/s :-



- a. This Hon'ble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari under Article 226 of the Constitution of India, calling for the order dated 22.11.2019 passed under section 9(2) of the Central Sales Tax Act, 1956 r/w section 31(1) of the Bihar Value Added Tax Act, 2005 Notice of Demand dated 23.11.2019 issued under section 25 and section 39 of the VAT Act r/w Rule 27 of the Bihar Value Added Tax Rules, 2005, passed by the Deputy Commissioner of Commercial Taxes, Patna Special Circle, and after going into the validity and legality thereof to quash and set aside the same;
- b. For holding and a declaration that the impugned order of assessment and consequential demand notice is based on clerical error committed by the office of the respondent Customs Department which has been later rectified by issuance of a certificate and as such obliged the respondent assessing authority to accept the same;
- c. Cost of the Petition may please be provided for;
- d. For such further and other reliefs as the nature and circumstances of the case may require.

It is brought to our notice that vide impugned order dated 22.11.2019 passed by the respondent No.5, namely, the Deputy Commissioner of State Taxes, Special Circle, Patna, in CST/TIN



No. 10010314156, under Section 9(2) of the Central Sales Tax Action 1956 read with Section 31(1) of the Bihar Value Added Tax Act, 2005 and demand notice dated 23.11.2019 issued under Sections 25 and 39 of the Bihar Value Added Tax, 2005, for the tax period 2014-15, a demand of Rs.2,77,15,456.19/- has been raised.

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, 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 does not assign any reasons sufficient, even decipherable from the record, as to how the officer could determine the amount due and payable by the assessee. The order 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 22.11.2019 passed by the respondent No.5, namely, the Deputy Commissioner of State Taxes, Special Circle, Patna, in CST/TIN No. 10010314156, under Section 9(2) of the Central Sales Tax Act 1956 read with Section 31(1) of the Bihar Value Added Tax Act, 2005 and demand notice dated 23.11.2019 issued under Sections 25 and 39 of the Bihar Value Added Tax, 2005;

(b) The petitioner undertakes to deposit twenty 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 had already deposited up to the extent of twenty percent, the same shall be set off against the amount to be deposited. Also, if the deposit is found to be 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 14.02.2022 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) We also find the authorities not to have adjudicated the matter on the attending facts and circumstances. All issues of fact and law ought to have been dealt with, even if the proceedings were to be ex parte in nature;

(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 assessment, 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 before this Court, if so 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 reasonable dispatch;

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

(r) If possible, proceedings during the time of current Pandemic [Covid-19] be conducted through digital mode;



The instant petition stands 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)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	27.01.2022
Transmission Date	

