## IN THE HIGH COURT OF JUDICATURE AT PATNA
**Civil Writ Jurisdiction Case No.1602 of 2022**

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Anchor Electricals Pvt. Ltd. a registered company having its place of business at First Floor, Geetanjali Palace, Jamal Road, Patna- through its authorized representative namely Mukesh Kumar, male, aged about 44 years, Son of Lal Babu Prasad, Resident of Kaimashikoh, Behind Electricity Office, Patna City, Nagla, Patna- 800008.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of Commercial Taxes, Government of Bihar, Patna.
2. The Deputy Commissioner of State Taxes, Patliputra Circle, Patna. (2016-2017 Bihar Value Added Tax Act, 2005).

... ... 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 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 : 31-01-2022**

Heard learned counsel for the parties.

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

a) For issuance of a writ in the nature of certiorari for quashing of the exporting order dated 15.12.2021 passed by the respondent number 2 under section 31 of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as the act for short);

b) For holding and a declaration that the respondent No. 2 has no jurisdiction to initiate, proceed with and conclude a proceeding under section 31 of the act on the basis of audit objection of the Comptroller and Accountant General Bihar Patna;

c) For further holding and a declaration that the impugned order based on audit objection of the Comptroller and Accountant General Bihar Patna is otherwise also invalid, unsustainable in law and wholly without jurisdiction in terms of the law laid down by this honourable court in the matter of **M/s Tata Projects Ltd Versus The State Of Bihar and others reported in 2019 (4) PL JR – 1255**;

d) For further holding and a declaration that the respondent number 2 was required to apply his mind to the actual materials on record and ought to have recorded his due satisfaction in terms of rule 25 of the Bihar Value Added Tax Rules, 2005 (hereinafter referred to as the rules for short) before passing the impugned order dated 15.12.2021;

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

Petitioner has prayed for quashing of the impugned order dated 15.12.2021 passed by Respondent No. 2 namely the Deputy Commissioner of State Taxes, Patliputra Circle, Patna in Tin VAT- 1005-0866-034 Year-2016-17 (Annexure-1).

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 15.12.2021 passed by Respondent No. 2 namely the Deputy Commissioner of State Taxes, Patliputra Circle, Patna in Tin VAT- 1005-0866-034 Year-2016-17 (Annexure-1) as also the notice dated 16.12.2021 (Annexure-1/A).

(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’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 1st of March, 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) 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 stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, 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)**

Amrendra/PKP

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| **AFR/NAFR** | |
| **CAV DATE** | |
| **Uploading Date** | 02.02.2022 |
| **Transmission Date** | |