IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5588 of 2021

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M/s Keller Grounds Engineering India Pvt. Ltd. having its registered office at 7th Floor Eastern Wing, Centennial Squire, 6A, Docto Ambedkar Road, Kodambakkam, Chennai and its regional office at Opposite IGIMS, Bailey Road, Sheikhpura Patna through its partner Mr. Yandamuri Lakshmi Badra Raju

... ... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Old Secretariat, Patna
2. Commissioner, Commercial Tax Department, Govt. of Bihar, New Secretariat, Patna
3. Joint Commissioner of State Tax, Special Circle, Patna
4. Additional Commissioner, Commercial Taxes, Special Circle, Patna

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Anurag Saurav, 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)

Date : 10-03-2022

Petitioner has prayed for the following relief(s):

> "i. For issuance of writ in the nature of mandamus directing the respondent authorities specially respondent no. 3 and 4 to considered the Gross Turnover of the petitioner on the basis of Audit Report and other evidences produced by the petitioner for the Financial Year 2014-15, Whereas petitioner had erroneously mentioned Gross Turnover as Rs.17,38,92,013/- instead of Rs.2,08,22,655/- and the same was

rectified much prior to assessment through Audit Report and all evidences produced by the petitioner during assessment but Assessing Officer contrary to records had passed the order on a wrong turnover.

ii. For issuance of writ in the nature of certiorari, setting aside the order dated 30.12.2020 passed by Respondent no. 3 i.e. Assistant Commissioner of State Tax, Special Circle, Patna Whereby and Where under without considering the Gross Turnover of the petitioner, respondent authorities had passed the order and impose tax of Rs.3,04,67,260/-, Whereas the Gross Turnover of the petitioner was Rs.2,08,22,665/-.

iii. For granting stay on Demand Notice dated 30.12.2020 issued by Respondent no. 3 Vude Notice ID. No. N110184249715265, Whereby a demand of Rs.3,04,67,260/- was raised against the petitioner and petitioner was directed to deposit the amount by 31.01.2021.

iv. For issuance of any other appropriate writ(s), order(s), direction(s) as your Lordship may deem fit and proper in the facts and circumstances of the case."

It is brought to our notice that vide impugned order dated 30.12.2020 passed by the Respondent No. 3 namely the Assistant Commissioner of State Tax, Special Circle, Patna for the financial year 2014-15, whereby a demand of Rs.3,04,67,260/- has been raised against the petitioner.

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 30.12.2020 passed by the Respondent No. 3 namely the Assistant Commissioner of State Tax, Special Circle, Patna for the financial year 2014-15.;

(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 04.04.2022 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 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)

K.C.Jha/-DKS

AFR/NAFR	
CAV DATE	
Uploading Date	11.03.2022
Transmission Date	