IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3764 of 2022

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M/s Dalmia Cement (Bharat) Ltd. A Company incorporated under the provisions of the Companies Act having its Registered Office at Dalimiapuram, District- Tiruchirapalli, Tamil Nadu and principal place of business at 6th floor, Nutan Plaza, Bandar Bagicha, PS Kotwali, District- Patna through its Manager (Finance and Accounts) - cum- Authorized Signatory, Saroj Kumar Behera, Aged about 42 years, Gender male, Son of Shri Resident of B-5, Flat No. 205, Subhash Nagar Housing Complex, P.S. Serampore M, District- Hooghly (West Bengal).

... ... Petitioner/s

Versus

1. The State of Bihar Through the Secretary cum Commissioner State Tax, Department of Commercial Taxes, Vikash Bhavan, Bailey Road, Patna.
2. The Joint Commissioner, State Tax, Special Circle, Patna.
3. The Deputy Commissioner, State Tax, Special Circle, Patna.
4. The Assistnat Commissioner, State Tax, Special Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S. D. Sanjay, Sr. Advocate Mr. Mohit Agarwal, Advocate Mr. Akshat Agarwa, Advocate Mr. Anand Kumar, Advocate Ms. Sushila Agarwal, Advocate Ms. Sushmita, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (SC11)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 09-03-2022

Heard learned counsel for the parties.

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

i) For quashing of the that part of Assessment Order dt. 31.12.2021 passed by the Deputy Commissioner, State Tax (erstwhile Assistant Commissioner of Commercial Taxes, Special Circle, Patna) under Section 8 of the Bihar Entry Tax Act, 1993 read with Section 31 of the Bihar VAT Act, 2005 for the Financial Year 2016-17 by which the Respondent Assessing Authority has imposed interest, alleging delayed payment of Entry Tax, to the tune of Rs. 2,64,21,476/- without appreciating the fact that the amount of Entry Tax was already lying with the Respondent Department in advance;

ii) For quashing of the consequential demand Notice ID N110107802304885 dated 05.01.2022 issued by the Respondent Assessing Officer by which on basis of the impugned Assessment Order dated 31.12.2021 has raised a demand of Rs. 2,66,36,717/-;

iii) For holding that the imposition of interest on alleged delayed payment of Entry Tax by the Respondent Assessing Officer is arbitrary and contrary to the admitted fact that already an amount of Rs. 1,00,00,000/- was in excess to the Respondent Department in the FY 2014-15 against Entry Tax, further an amount of Rs. 1,07,17,330/- was in excess with the Respondent Department in the FY 2015-16 against Entry Tax and a further amount of Rs. 1,08,76,036/- was in excess with Respondent Department in the FY

2015-16 against VAT which was adjusted in total against the Entry Tax liability for the FY 2016-17;

iv) For a direction in alternative to the Respondent Department to pay interest equal to the rate at which it is charging interest on the alleged delayed payment on the amount realised by the Respondent Department in advance in anticipation of the tax liability as the value of money for the government and for a citizen is same and no discrimination can be made on the value of money;

v) For holding that when an excess of tax of a particular financial year is adjusted towards the tax liability of subsequent years, the order of refund by way of adjustment is only a mere formality and the date of order of refund shall not be treated as the date of payment of the liability of the subsequent year as no revenue loss has been suffered by the Respondent Department rather the department has been enjoying the excess deposit till passing of the order of refund by way of adjustment; and/or for any other relief(s) for which the Petitioner may be found entitled to in the facts and circumstances of the present case.

It is submitted by learned senior counsel for the petitioner that Annexure-11 is the assessment order dated

31.12.2021 for the financial year 2016-17, passed by the respondent No.4, namely, the Assistant Commissioner, State Tax, Special Circle, Patna, in which amount of Rs. 2,65,20,684/- has been calculated as interest for delayed payment.

It is further submitted that in the previous financial year, there were excess amount deposited by the petitioner, which were lying in the coffer of the State and in the assessment year 2016-17, those excess amount had been adjusted against the demand notice.

Petitioner is aggrieved with the calculation of interest amount of Rs. 2,65,20,684/-, as certain amount were lying with the Department, as an excess tax paid by the petitioner. As such, there was no occasion for imposing any interest upon the said amount.

Learned senior counsel for the petitioner further submits that he has already filed a representation dated 29.12.2021, as contained in Annexure-10, before the Assessing Officer, Patna Special Circle, Patna, to the effect that since the petitioner has already deposited excess amount, which has been adjusted against the demand notice, as such, he is not liable to pay interest on the demand notice. However, although the Assessing Officer has taken note of Annexure-10 filed by the petitioner, but no discussion or finding has been recorded by the Assessing Officer with respect to Annexure-10.

In such view of the matter, the order dated 31.12.2021, passed by the respondent No.4, namely, the Assistant Commissioner, State Tax, Special Circle, Patna, by which liability has been shown to the petitioner to pay interest to the tune of Rs. 2,65,20,684/-, is set aside.

The writ petition is disposed of with liberty to the petitioner to appear before the Assessing Officer, Patna Special Circle, Patna, on 14.03.2022 at 10.30 A.M., along with a copy of this order. The Assessing Officer shall hear the petitioner and pass a fresh order with regard to the liability of payment of interest, at the earliest.

Interlocutory Application(s), if any, also stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	