IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3982 of 2022

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Sun Pharmaceutical Industries Ltd. a registered Company having its Local Place of Business at Sun Pharmaceutical Industries Ltd., Kankarbagh Main Road, Near Yadav Timber, Bahadurpur, Patna-800020 through its authorised representartive namely Shailendra Kumar Singh male aged about 59 Years Son of Late Sharda Raman Singh resident of 19 A, Bhardwaj Bhawan, New Area Kadam Kuan, Near Congress Maidan Road, Phulwari, Patna, BIhar-8000003.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Commissioner, Department of State Taxes, Government of Bihar Patna.
2. The Principal Commissioner, Department of State Taxes, Government of Bihar Patna.
3. The Deputy Commissioner of State Taxes, Special Circle, Patna. (2015-2016 Central Sales Tax Act, 1956)

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Gautam Kumar Kejriwal, Adv

For the Respondent/s : Mr.Vivek Prasad (GP7)

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

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-03-2022

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 order dated 26.03.2021 passed by the respondent no. 3with respect to the petitioner for the financial year 2015-16 under Section 9(2) of the Central Sales Tax Act, 1956 (hereinafter referred to as the act 1956 for short) read with section 31(1) of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as the act 2005 for short).

(b) For issuance of a writ in the nature of certiorari for quashing of the demand notice dated 31.03.2021 issued by the respondent no. 3 on the basis of the impugned order of assessment dated 26.03.2021 being consequential to the illegal, arbitrary and unreasonable exercise of jurisdiction by the said respondent;

(c) For further issuance of a writ or order of direction restraining the respondent no. 3 or any of the respondents from adopting coercive measures against the petitioner for recovery of the amount of tax and interest demanded in terms of the impugned order of assessment dated 26.03.2021;

(d) For holding and a declaration that the impugned order of assessment and consequential demand notice is an outcome of a decision of the respondent no. 3 which is based on irrelevant considerations and not the relevant ones and as such suffers from jurisdictional error;

(e) For further holding and a declaration that the very issued of the factual dispute as regards the name of exporter and place of origin in the bills of export produced by the petitioner before the respondent no. 3 could have been easily verified by the said respondent by exercising powers under Section 55 of the Bihar Value Added Tax Act, 2005;"

It is brought to our notice that vide impugned order dated

26.03.2021, passed by the respondent No.3, namely, the Deputy Commissioner of State Taxes, Special Circle, Patna, in CST/TIN No. 10010198144, 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 31.03.2021, issued under Sections 25 and 39 of the Bihar Value Added Tax, 2005, for the tax period April, 2015 to March, 2016, a demand of Rs.61,04,278.33/- 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 26.03.2021, passed by the respondent No.3, namely, the Deputy Commissioner of State Taxes, Special Circle, Patna, in CST/TIN No. 10010198144, 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 31.03.2021, 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 11.04.2022 at 10:30 A.M.

(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;

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	
Transmission Date	