**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.6256 of 2022**

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M/s AST Telecom Solar Pvt. Ltd. having its registered office at Prachi, D-177, 1st Floor, Patliputra Colony, Patna through its Authorized representative Mr. Mritunjoy Kumar Dubey.

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner, Commercial Tax Department, New Secretariat, Patna.
2. Joint Commissioner (Appeal) Central Division, Patna.
3. Joint Commissioner of Commercial Taxes, Special Circle, Patna.
4. Deputy Commissioner of Commercial Taxes, Special Circle, Patna.
5. Assistant Commissioner, Commercial Taxes, Special Circle, Patna.

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Anurag Saurav, Advocate<br>Mr. Priyajeet Pandey, Advocate<br>Mr. Abhinav Alok, 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 : 17-05-2022**

Heard learned counsel for the parties.

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

(i) For issuance of appropriate writ or writ in the nature of certiorari for quashing of order dated 24.02.2021 (for financial year 2015-16) passed under section 31 of Bihar Value Added Tax Act 2005 passed by Assistant Commissioner of Commercial Taxes, Special Circle, Patna Whereby and Where under an amount of Rs. 16,99,271/- has been imposed as tax interest and penalty under Bihar VAT Act 2005 for the financial year 2015-16.

(ii) For quashing of demand notice dated 12.03.2021 issued vide memo bearing Memo No. N110173562807866 under the signature of Assistant Commissioner of Commercial Taxes, Special Circle, Patna whereby and where under a demand of Rs. 16,99,271/- has been raised.

(iii) For quashing of order dated 01.02.2022 passed by Additional Commissioner (Appeal) Central Division, Patna whereby and where under the appeal of the petitioner was rejected vide order dated 01.02.2022 and the order passed by Assessing Officer has been upheld.

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

Petitioner has prayed for quashing of order dated 24.02.2021 passed by Respondent No. 4, namely, Deputy Commissioner of Commercial Taxes, Special Circle, Patna (Annexure-3); Demand Notice ID- N110173562807866 dated 12.03.2021 (Annexure-4) and the order dated 01.02.2022 passed by the Additional Commissioner, State Tax, (Appeal), Central Division, Patna in Appeal Case No. ST/SL-53/2020-21 (Annexure-6).

The orders were passed without following the principles of natural justice.

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 reasons sufficient 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. 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.

As such, we dispose of the present writ petition in the following mutually agreeable terms:

(a) We quash and set aside the impugned order dated 24.02.2021 passed by Respondent No. 4, namely, Deputy Commissioner of Commercial Taxes, Special Circle, Patna (Annexure-3); Demand Notice ID-N110173562807866 dated 12.03.2021 (Annexure-4) and the order dated 01.02.2022 passed by the Additional Commissioner, State Tax, (Appeal), Central Division, Patna in Appeal Case No. ST/SL-53/2020-21 (Annexure-6);

(b) We accept the statement of the petitioner that twenty five cent of the total amount already stands deposited. If that were so, well and good. However, if the amount is not deposited for whatever reason(s), same shall be done before the next date;

(c) Further the petitioner undertakes to additionally deposit ten per cent of the amount of the demand raised before the Assessing Officer. This shall be done within four weeks;

(d) 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;

(e) 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;

(f) Petitioner undertakes to appear before the Assessing Authority on 6th of June, 2022 at 10:30 A.M., if possible through digital mode;

(g) The Assessing Authority shall decide the case on merits after complying with the principles of natural justice;

(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 case, 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, if 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 a 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, 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** | 18.05.2022 |
| **Transmission Date** | |