IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7596 of 2022

==

M/s Vijay Electrical Limited a company registered under Indian Companies Act having its registered office at Road No. 6-3-648/1 and 2 Raj Bhavan Road, Somajiguda, Hyderabad- 500082, Regional Office at- Sia Kripa, Miss Mandal Compound, East Boring Road Canal Road, Patna, Bihar- 800001, through its Manager- Finance and Account and authorized signatory Meher Tej K R S V Alamuri, son of Bala Krishna, Permanent address- Gollala Veedhi, Nallajarla Mandalam, Dubacherla, West Godavari, Andhra Pradesh- 534112, presently residing at- Sai Kripa, Mismandal, East Boring Canal Road, Post- GPO, P.S.- Buddha Colony, Patna- 800001

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of State Commercial Tax, Bihar, Patna.
2. The Commissioner, State Commercial Tax, Bihar, Patna.
3. The Joint Commissioner of State Commercial Tax, Patliputra, Patna, Bihar.
4. The Deputy Commissioner, State Tax, Patliputra Circle, Patna, Bihar.
5. The Assistant Commissioner, State Tax, Patliputra Circle, Patna, Bihar.

... ... Respondent/s

==

Appearance :

For the Petitioner/s : Mr.Krishna Mohan Mishra, Advocate

For the Respondent/s : Mr.Vikash Kumar (SC11)

==

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

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-06-2022

Heard learned counsel for the parties.

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

"To quash and set aside the order passed in appeal dated 04.02.2022 by additional commissioner of state tax appeal, central division Patna whereby and whereunder the ld. Additional Appellate Commissioner had confirmed the order passed by Assistant Commissioner of State Tax Patliputra Circle-Patna dated 27.01.2020 whereby and whereunder the tax levied under GST Act of Rs. 2, 82,26,090/- as well as penalty and interest has been conformed.

ii. To hold and declare that the order passed by assessing officer dated 27.01.2020 which affirm by the Additional Commissioner of State Tax, is bad and illegal as such the order dated 27.01.2020 is also liable to quash in view of the fact that the demand created under section 73 of the Act is illegal and without jurisdiction because the claim made by petitioner on account of input tax credit or VAT for adjustment against GST is valid.

Iii. To hold and declare that the interest and penalty levied on assessed tax is wholly bad and illegal in view of the fact that the petitioner had paid excess tax equal to the amount of tax assessed under section 73 as such, the levy of interest and penalty is highly unreasonable and against the provision of law.

iv. To further hold and declare that the Appellate Additional Commissioner has no power and authority to levy interest, from 12.03.2018 i.e. from the date of passing of order of assessment to the date of appellate order dated 07.12.2021 as such, levy of interest made by appellate commissioner is against the provision of the Act.

v. To pass any writ/writ, order/orders, direction/directions as deemed fit and proper."

It is brought to our notice that vide impugned order dated 04.02.2022, passed by Additional Commissioner of State Taxes(Appeals), Central Division, Patna in Appeal Case No. AD1008210151030, the appeal of the petitioner against the order dated 27.01.2020, issued by the respondent no. 5, namely, the Assistant Commissioner, State Tax, Patliputra Circle, Patna, Bihar, has been rejected affirming the order of the Assessing Authority.

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, contentions raised not considered by the Assessing Authority as well as the Appellate Authority; (b) order passed does not assign any reason 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 04.02.2022, passed by Additional Commissioner of State Taxes(Appeals), Central Division, Patna in Appeal Case No. AD1008210151030 and the order dated 27.01.2020, issued by the respondent no. 5, namely, the Assistant Commissioner, State Tax, Patliputra Circle, Patna, Bihar;

(b) We accept the statement of the petitioner that ten per cent of the total amount, being condition prerequisite for hearing of the appeal, 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 entire demand raised before the Assessing Authority. This shall be done within four weeks 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 05.07.2022 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 proceeding, 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 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)

Ashwini/Sujit

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.06.2022
Transmission Date	NA