

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16650 of 2021

M/s CICO PATEL JV., (a Joint Venture Unit Constituted by M/s Patel Engineering Limited a Company Incorporated under the Indian Companies Act, 1956 and M/s Chongqing International Construction Corporation, A Company registered under Chineses Companies Act having its registered office at No.40, Sixin Road, Yuzong, District- Chinginq, China having its Indian Office at 603, Shrikant Chamburs, Phase-I, 6th Floor, Adjacent to R.K. Studio, Trombay Road, Chembur, Mumbai- 400071, Maharastra, and joint Venture Unit having its local office at Behind, Indira Gandhi Institute of Medical Sciences, Sheikhpura, Patna- 800014, duly represented through its Authorized Signatory, Mr. Sanjeev Kumar.

... .. Petitioner/s

Versus

1. The State of Bihar through Commissioner, Commercial Taxes, Government of Bihar, Patna.
2. Joint Commissioner, Commercial Tax, Special Circle, Patna.
3. Deputy Commissioner, Commercial Tax, Special Circle, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Anurag Saurav, Advocate
For the Respondent/s : Mr. Vikash Kumar, SC-11

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 24-01-2022

Heard learned counsel for the parties.

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



- i. For issuance of writ in the nature of certiorari quashing the order dated 31.03.2021 under section 31 of Bihar VAT Act passed by Respondent no.3 whereby and where under Respondent no.3 has imposed Tax amounting Rs. 29,88,280.85/- in the Financial year 2015-16 without considering the fact that the petitioner had sub-contracted the entire contract on back to back basis to one M/s PPSL Capacite JV in back to back basis and petitioner had no tax liability on the entire turn over which has been sublet in the light of principle settled by Hon'ble Apex Court in the case of State of Andhra Pradesh Vrs Larson and Turbo (2008) 9 SCC 191 and respondent in lieu of the above said principle had allowed the previous financial year transaction (2014-15) of the petitioner.
- ii. For quashing of demand notice dated 31.03.2021 issued by Respondent no.3 whereby and where under an amount of Rs. 29,88,280/- has been imposed against the petitioner.
- iii. For issuance of writ in the nature of mandamus directing the respondent authorities specially Respondent no.3 to considered the case of the petitioner in the light of principle settled by Hon'ble Apex Court in the case of State of Andhra Pradesh Vrs Larson and Turbo (2008) 9 SCC 191.
- iv. For restraining the respondent authorities from recovery of tax amount from the petitioner till the disposal of the present writ application.

Petitioner has prayed for quashing of the impugned order dated 31.03.2021 passed by the Deputy Commissioner, State Tax,



Special Circle, Patna in VAT/TIN- 10011321013 (Annexure-8) and the Notice of Demand under Section 25 and Section 39 of the Bihar Value Added Tax Act, 2005 [Notice Id: N110182137301242] Annexure- 8/1. The order appears to be *ex parte* in nature.

Shri Anurag Saurav, learned counsel for the petitioner states that 50 per cent of the impugned amount of demand already stands recovered from the petitioner. Additionally, petitioner is willing to deposit 10 per cent of the impugned demand.

Statement accepted and taken on record.

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.

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 *ex parte* in nature.

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 31.03.2021 passed by the Deputy Commissioner, State Tax, Special Circle, Patna in VAT/TIN- 10011321013 (Annexure-8) and the Notice of Demand under Section 25 and Section 39 of the Bihar Value Added Tax Act, 2005 [Notice Id: N110182137301242] Annexure- 8/1;

(b) We accept the statement of the petitioner that fifty per cent of the amount of the demand already stands recovered.

(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 28th of February, 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

AFR/NAFR	
CAV DATE	
Uploading Date	27.01.2022
Transmission Date	

