IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17069 of 2021

==

Samsung India Electronics Private Limited having its local office at 401-501, Vasundhara Metro Mall, East Boring Canal Road, P.S. Budha Colony Patna-800001 through its authorized signatory namely Sanjay Verma, male aged about 45 years, son of Mahesh Prasad Verma, resident of Flat No. 203, Swarnrekha-1, Trivenipuram, Dumardagga, Booty, Ranchi-835217 (Jharkhand).

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of Commercial Taxes, Government of Bihar, Patna.
2. The Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
3. The Joint Commissioner of State Taxes, Patliputra Circle, Patna.
4. The Assistant Commissioner of State Taxes, Patliputra Circle, Patna.

... ... Respondent/s

==

Appearance :

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

For the Respondent/s : Mr. Vivek Prasad, GP-7

==

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 : 01-02-2022

The 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 16.08.2021 and the consequential Demand Notice dated 16.08.2021 passed by the Respondent No. 3 in exercise of powers under Section 31 of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as the Act for short) for being in teeth of the law settled by the Hon'ble Apex Court in the matter of CIT versus Kelvinator India Ltd reported in 2010 – 2 – SCC – 723 and the full bench judgement of this Hon'ble court in the matter of Bhimraj Madanlal Vs State of Bihar and Others [1984 PLJR- 154 and in the matter of Samsung India Electronics Private Limited versus the state of Bihar and others (Judgement dated 14.12.2016 delivered in CWJC number 3942 of 2015 and other analogous cases);

b) For holding and a declar declaring that the Respondent Nos. 3 having already exercised power of scrutiny under Section 25 of the Act with respect to the same Returns of the Petitioner for Financial Year 2016 – 2017 and having satisfied itself of the self-assessed tax liabilities admitted and discharged by the Petitioner with respect to the sales and purchases made during the said Financial Year could not have reopened the proceedings already concluded in absence of any information or material not forming part of the assessment records;

c) For further holding and a declaring that the Objection/Report of the Comptroller and Auditor General of India pertaining to the same records of the Petitioner for the Financial Year 2016 – 2017 do not form any information or material outside the records already available with the Respondent No. 3 at the time of scrutiny done under Section 25 (3) of the Act and therefore the entire proceeding initiated and concluded in the shape of Impugned Order of assessment is vitiated in law as being based on mere change of opinion with respect to the same facts and materials;

d) For further holding and declaring that the very exercise of jurisdiction by the Respondent No. 3 under Section 31 of the Act relying only on the Audit Report passed by the Comptroller and Accountant General of India, dropping the proceedings under Section 33 of the Act, is without the jurisdiction conferred under Section 31 of the Act and suffers from a jurisdictional error;

e) For further restraining the Respondents from taking any coercive action for recovery of the amount of tax and interest assessed and demanded in terms of the Impugned Order of assessment and the consequential Demand Notice during the pendency of the present Writ Application;

f) For further issuance of a direction to the Respondents to refund such of the money recovered from the Petitioner on account of the assessed tax and/or interest in terms of the Impugned Order of Assessment and consequential demand Notice either before or after filing of the present Writ Application as such recovery would be illegal, without jurisdiction and unsustainable in the eye of law;

g) For grant of such other relief or reliefs to which the Petitioner is found entitled in the facts and circumstances of this case.

After the matter was heard for some time, finding the Bench not to be agreeable with the submissions made across the bar, learned counsel for the petitioner, under instructions, fairly states that the petitioner be allowed to prefer an appeal within a period of four weeks from today, and accounting for the fact that out of a sum of Rs.127 Crores, the Revenue has already recovered Rs.124 Crore, the appeal be heard on merit and till adjudication thereof, no coercive action shall be taken against the petitioner.

Mr. Vivek Prasad, learned GP-7 states that he does not dispute such position and assures that if the petitioner will prefer an appeal within a period of four weeks from today, as also fully cooperate during the course of proceedings and not take unnecessary adjournment till the adjudication, no coercive steps shall be taken against the petitioner.

Statement accepted and taken on record.

As such, petition stands disposed of in the following terms:-

(a) Petitioner is permitted to prefer an appeal within a period of two months from today, if possible, through digital mode;

(b) In the event of appeal being preferred within a period of two months from today, the issue of limitation shall not come in the way of adjudication of the appeal on merits;

(c) Opportunity shall be granted to the parties to place on record all essential documents and materials, if so required and desired;

(d) Petitioner through learned counsel undertakes to fully cooperate and not take unnecessary adjournment;

(e) The Appellate Authority shall decide the appeal on merits, in compliance of the principles of natural justice;

(f) The Appellate Authority shall pass a reasoned and speaking order, copy whereof be supplied to the parties;

(g) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(h) We are hopeful that as and when petitioner takes recourse to such remedies, as are otherwise available in law, before the appropriate forum, the same shall be dealt with, in accordance with law and with reasonable dispatch;

(i) We have not expressed any opinion on merits and all issues are left open;

(j) If necessary, proceedings during the time of current Pandemic [Covid-19] would be conducted through digital mode;

(k) Liberty reserved to the petitioner to challenge the order, if required and desired.

The instant petition sands disposed of in the aforesaid terms.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	02.02.2022
Transmission Date	