IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12947 of 2022

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Polycab India Ltd. (formerly known as Polycab Wires Private Limited) having its place of business at Plot No. 1780, Sampatchak, Near Usha Martin Global School, Sampatchak, Patna, Bihar-800007 through its authorized representative namely Santosh Kumar, male, aged about 39 years son of Suresh Prasad, resident of 130, Sidheshwar Nagar, Mainpura, Near Devi Mandir, Patna GPO, Patna, Bihar-800001.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of Commercial Taxes, Government of Bihar, Patna.
2. The Joint Commissioner of State Taxes, West Circle, Patna.
3. The Assistant Commissioner of State Taxes, West Circle, Patna (2016-2017 Bihar Vallue Added Tax Act, 2005).

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Gautam Kumar Kejriwal, Advocate
For the Respondent/s : Mr.Vikash Kumar (S.C. 11)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-10-2022

Petitioner has prayed for following relief(s) : -

> "a) For issuance of a writ in the nature of certiorari for quashing of the order dated 11.05.2022 passed by the respondent number 3 and the notice of demand dated 11.05.2022, whereby liability of tax, interest and penalty has been raised against the petitioner with respect to financial year, 2016-2017 in gross violation of the principles of natural justice;
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> b. For issuance of a writ or order or direction

restraining permanently the Respondents, their servants, officers and agents from making any recovery of the amount of tax, interest and penalty demanded in terms of the impugned order of assessment and notice of demand both dated 11.05.2022 by any means;

c) For further issuance of a writ or order or direction upon the respondent number 3 to communicate all issues of claims and considerations for the purpose of assessment of liability with respect to financial year 2016-2017 and pass a fresh order of assessment after due opportunity of hearing afforded to the petitioner;

d) For grant of any other relief or reliefs to which the petitioner is found entitled to in the facts and circumstances of this case."

Even though the petitioner had submitted information with regard to the input tax credits, but, however, he had placed on record the documents to corroborate the same only with respect to certain entries, in relation to which benefit stands accorded by the Assessing Officer, who has disallowed the remaining entries only for the reason that the corroborative material was not placed on record.

We are of the considered view that the Assessing Officer needs to re-examine issue with the petitioner placing on record the corroborative material in support of the list already placed on record.

Shri Gautam Kumar Kejriwal, learned counsel for the petitioner, states that pursuant to the passing of the impugned order, a demand of Rs. 27 lacs (approx) towards short fall and tax as also interest stands raised by the respondents vide communication dated 11.05.2022.

He further states that even though the petitioner is ready to deposit 20% of the amount raised in terms thereof before the Assessing Officer. Such deposit shall be subject to the final order, which the assessing officer may pass, accounting for the materials which the petitioner shall place on record.

While setting aside the impugned order dated 11.05.2022 passed by the Respondent No. 3, namely, The Assist Commissioner of State Taxes, West Circle, Patna, we remand the matter back to the authority for consideration afresh.

The petitioner undertakes to deposit 20% of the amount of the demand raised before the Assessing Officer. This shall be done within eight weeks.

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.

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.

Petitioner undertakes to appear before the Assessing Authority on 02.11.2022 at 10:30 A.M., if possible through digital mode.

The Assessing Authority shall decide the case on merits after complying with the principles of natural justice.

Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired.

During pendency of the assessment, no coercive steps shall be taken against the petitioner.

The Assessing Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner.

Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment.

The Assessing Authority shall decide the case on merits expeditiously, preferably within a period of three months from the date of appearance of the petitioner.

The Assessing Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties.

Liberty reserved to the petitioner to challenge the order before this Court, if required and desired.

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

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.

We have not expressed any opinion on merits and all issues are left open.

If possible, proceedings be conducted through digital mode.

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)

K.C.Jha/chn

AFR/NAFR	
CAV DATE	
Uploading Date	16.10.2022
Transmission Date	