

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8895 of 2023

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M/s Consulting Room Private Limited A Company incorporated under the Companies Act, 2013 having address at House No. 1, Dr. Ram Govind Singh Path, Behind Panch Shiv Sai Mandir, Kankarbagh, Patna, Bihar through its Authorized Representative namely Ashray Sachdeva, aged about 30 years (M), Son of Ajay Sachdeva, Resident of 37/3, block 37, Old Rajendra Nagar,, PO and PS Rajendra Nagar, New Delhi.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
2. The Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
3. The Additional Commissioner of Commercial Taxes (Appeals), Central Division, Patna.
4. Deputy Commissioner of State Tax, Patliputra Circle, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 9205 of 2023

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M/s Consulting Room Private Limited a Company incorporated under the Companies Act, 2013 having Address at House No.1, Dr. Ram Govind Singh Path, Behind Panch Shiv Sai Mandir, Kankarbagh, Patna, Bihar through its Authorized Representative Ashray Sachdeva, aged about 30 years (M), Son of Ajay Sachdeva, Resident of 37/3, Block 37, Old Rajendra Nagar, P.O. and P.S. - Rajendra Nagar, New Delhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar Patna.
2. The Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
3. The Additional Commissioner of Commercial Taxes (Appeals), Central Division, Patna.
4. Deputy Commissioner of State Tax, Patliputra Circle, Patna.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 8895 of 2023)

For the Petitioner/s : Mr. Mrigank Mauli, Sr. Advocate
Mr. Brisketu Sharan Pandey, Advocate
Mr. Madan Kumar, Advocate



For the Respondent/s : Mr. Abhishek Kumar, Advocate
Mr. Vikash Kumar, SC-11
(In Civil Writ Jurisdiction Case No. 9205 of 2023)
For the Petitioner/s : Mr. Mrigank Mauli, Sr. Advocate
Mr. Brisketu Sharan Pandey, Advocate
Mr. Madan Kumar, Advocate
For the Respondent/s : Mr. Abhishek Kumar, Advocate
Mr. Vikash Kumar, SC-11

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 07-08-2023

The petitioner was an assessee under the Bihar Value Added Tax Act, 2005(for brevity, 'VAT Act') and is aggrieved with the orders passed in appeal, for the assessment year 2017-18; both under the VAT Act and the Central Sales Tax Act. In the appeals filed, the assessee moved an application for stay of recovery and under both the enactments, the first Appellate Authority directed payment of 40 % of the total disputed amount.

2. Sri Mrigank Mauli, learned Senior Counsel appeared for the assessee and pointed out that there is absolutely no consideration, while mulcting the assessee with the liability of 40%, while the appeal was pending. It is also pointed out that the assessee has more input tax credit than the tax liability imposed on the assessee. The total dues include the interest and penalty which is not computed for the purpose of the deposit



under the appeal provision; which speaks only of the tax liability.

3. The learned Government Advocate Shri Vikash Kumar, on the other hand, points out that despite the pre-deposit insisted under Section 72, the assessee has been enabled to file an application for stay of recovery under Rule 46 of the Bihar Value Added Tax Rules, 2005 (for brevity, 'the Rules). The pre-deposit does not necessarily absolve the assessee from the recovery, hence. The consideration made by the first Appellate Authority at the interim stage cannot be faulted going by the provision under Rule 46 and the authoritative pronouncement dated 06.12.2021 by a Division Bench of this Court in ***C.W.J.C. No.8562 of 2021***, titled as ***McNally Bharat Engineering Co. Ltd. v. The State of Bihar & Ors.***

4. Looking at the facts of the case under the VAT Act, the impugned order of stay is produced at Annexure-P/1 in C.W.J.C. No. 8895 of 2023 and assessment order is at Annexure-P/2, which was pursuant to the notice dated 14.03.2023 at Annexure-P/4. The petitioner filed a reply, Annexure-P/5 dated 30.03.2023 to the notice issued by Annexure-P/4 and Annexure-P/2 order was passed.

5. As far as the CST Act is concerned, the stay



order is produced as Annexure-P/1 dated 02.06.2003 and the notices and orders issued are also of the same dates as in the case of the VAT Act; produced in C.W.J.C. No. 9205 of 2023.

6. Both the interim orders notice that the assessee has paid 20% of the tax determined by the Assessing Officer at the time of filing the appeal. The further direction is to pay an amount of 40% of the total demand, including the interest and penalty, upon which alone the stay of recovery of balance amounts were ordered.

7. We have looked at the provisions of appeal under the VAT Act and Rule 46 of the Rules, which is applicable also for the CST Act. Section 72 has the nominal heading of 'Appeal to Deputy Commissioner and Joint Commissioner', which is the provision for first appeal. Sub-section (1) provides an appeal to be filed *inter-alia* from an order of assessment or an order levying interest or penalty passed by the prescribed authority, subject to the rules as may be made by the State Government. As a condition for maintaining an appeal, under sub-section(2), there is a requirement for paying 20 % of the tax assessed or full amount of the admitted tax, whichever is higher. Sub-section (3) is with reference to the delay in filing the appeal and sub-section(4) prescribes the manner in which an appeal can be



disposed of, which are not relevant to the issue agitated herein. Sub-section(5) of Section 72 mandates that no order under the provision shall be passed without giving a reasonable opportunity of hearing to the assessee and the authority whose order is impugned.

8. Rule 46 deals with disposal of appeal or application for revision. Sub-rule(1) provides for summary dismissal of appeal or revision if it does not comply with the requirements of Rule 45, with the proviso again mandating a hearing before summary dismissal. Sub-rule(2) permits such summary dismissal on any other reasonable grounds again after giving a reasonable opportunity of being heard. Sub-rule(3) provides for an admission or rejection of the appeal within 30 days of the presentation; ensuring an opportunity of hearing before an order of rejection. Sub-rule (4) has five clauses; clause (i), enabling the assessee/appellant to pray for stay of recovery of the disputed amount of tax, penalty or interest arising out of the impugned order for which a separate application has to be made which details the facts leading to the assessment and the computation of the amounts demanded. Clause (ii) requires the Appellate Authority to consider the stay application in an appeal, which has been entertained, after giving a reasonable



opportunity of hearing and to dispose of such petition within one month from the date of presentation of the interim application. Clause (iii) empowers the Appellate Authority at his discretion to make an order in writing staying realization of the amount of tax or interest partly or wholly on such terms and conditions, as the authority may deem fit and proper in the facts and circumstances of the case. Clause(iv) mandates that when a conditional order is passed for staying the recovery on payment of a portion of the amount, then the assessee has to make such payment by the dates specified and clause (v) provides that in the event of such condition not being complied with within the specified date or as extended by the Appellate Authority, then the stay of recovery ordered shall stand automatically vacated.

9. In *McNally Bharat Engineering Co. Ltd.* (supra), this Court looked at the provisions and held that in all cases under Section 72; within 30 days, the Appellate Authority shall either admit or reject the appeal; which order shall be made without insisting on the compliance of an interim order passed under Rule 46 (4). The appeal shall be disposed of within a period of six months from the date of presentation, which measure of expeditious disposal will only result in economic growth for which the Commissioner of State Taxes could take



appropriate steps.

10. We have no doubt that the mere pre-deposit mandated under Section 72, does not absolve the assessee from making the payment, as per the demand raised; based on an assessment order. If the recovery is to be stayed, the assessee necessarily has to file an application for stay, as provided under Rule 46 (4)(i), which also has to be considered by the authority within a period of one month from the date of presentation.

11. We cannot also dispute the discretion conferred on the authority under Rule 46 (4)(iii) to dispose of the stay petition on such terms and conditions, deemed fit and proper in the facts and circumstances of the case. We also have to emphasize reasonable opportunity of hearing, as mandated by clause (ii) of Rule 46(4). What turns from the above provision is that though the Appellate Authority is empowered to stipulate any terms and conditions, including part payment of the demand, the same has to be done in a judicious manner after proper application of mind. This is the tenor of the mandate in granting a reasonable opportunity of hearing and also the discretion imposed on the authority to stay the recovery on such terms and conditions as deemed fit and proper, in the facts and circumstances of the case.



12. The discretion has to be exercised, as any reasonable man would do and also on the particular facts coming out from the assessment order. A *prima facie* finding has to be recorded regarding whether the assessment is proper or not, the assessee should pay the entire amounts or part amounts while the appeal is pending and the circumstances under which such condition is imposed on the assessee.

13. We do not find anything detracting from the proposition we have delineated or contrary to that, in ***McNally Bharat Engineering Co. Ltd.***(supra). What we are essentially called upon to consider is whether the present orders impugned have been passed in the manner it is intended to be passed based on the aforesaid provisions.

14. Both the impugned orders, but for speaking about the 20% deposit made by the assessee of the tax determined and stating the total demand as also directing payment of 40% of the latter amount; there is no consideration seen from the orders passed. The impugned orders do not fall under the category of a reasoned consideration, which is required when the consideration has to be made after affording a reasonable opportunity of hearing and judicious exercise of discretion on the facts and circumstances, coming out in each



case. There is total non-application of mind and the orders passed are peremptory in nature; neither adverting to the arguments put forth by the assessee nor dealing with the facts and circumstances arising from the assessment order, in which the determination of tax is made. The discretion has been employed in a most arbitrary manner and we find no reason to sustain the said orders.

15. We set aside the Annexure-P/1, order of stay, in both the writ petitions. In this context, we also have to notice the manner in which the Assessing Officer proceeded for assessment. As we see from the records, a notice was issued on 14.03.2023 with the date of hearing on 27.03.2023. The assessee by an e-mail dated 27.03.2023, sought for time to produce the books of accounts of the company for the period April, 2017 to June, 2017, the VAT period for the assessment year 2017-18. The Assessing Officer peremptorily posted the matter on 30.03.2023, three days from the same hearing date and passed the order of assessment on the same day.

15. We would caution the Assessing Officers from making such peremptory orders disclosing undue haste which would stand against a judicious consideration and the reasonable opportunity provided to the assessee to reply to the notice



issued.

16. We direct the Registry to forward a copy of this order to the Commissioner of Taxes of the State of Bihar, to ensure that his officers scrupulously follow the principle of reasonable opportunity in all cases.

17. The writ petitions are allowed setting aside the impugned orders. The appeals shall be heard and the assessee shall cooperate with the same. The recovery as against the assessment orders shall stand stayed till the first appeal is disposed of.

18. The writ petitions are allowed, leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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AFR/NAFR	AFR
CAV DATE	
Uploading Date	10.08.2023.
Transmission Date	

