IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1647 of 2024

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M/S Tide Water Company India Ltd, through its Territiory sales Manager, Manish Kumar, S/o Deepak Kumar, aged 32 years, resident of MF 3, Block no 8, Flat no 27, B.H Colony, Patna- 800026.

... ... Petitioner

Versus

1. The State of Bihar through the Commissioner of Commercial Taxes, Bihar, New Secretariat, Patna.
2. The Commissioner of Commercial Taxes, Bihar, New Secretariat, Patna.
3. The Deputy Commissioner of Commercial Taxes, Special Circle, Patna.
4. The Assistant Deputy Commissioner of Commercial Taxes, Special Circle, Patna.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Alok Kumar @ Alok Kr Shahi, Advocate Ms. Komal, Advocate Ms. Richa Rajiv Singh, Advocate
For the Respondent/s	:	Mr. Vivek Prasad, Government Pleader-7

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

10 10-02-2025 Heard Mr. Alok Kumar @ Alok Kumar Shahi, learned counsel for the petitioner and Mr. Vivek Prasad, learned GP-7 for the State.

2. This writ application has been preferred for setting aside the order dated 31.03.2023 and the demand notice dated 31.03.2023 (Annexure-2 Series) issued under Section 8 of the Entry Tax Act read with Section 31 and 39(4) of the VAT Act imposing a tax of Rs.31,23,426.27/- for the period 2017-18.

3. Mr. Alok Kumar, learned counsel for the petitioner submits that the petitioner company has paid Rs.1,26,21,928/- as Entry Tax to the Respondents for the year 2017-18. On 28.03.2017, the petitioner paid entry tax of Rupees Thirty Lakhs in which Rs.14,70,783/- was Entry Tax for the period 2016-17 and rest Rs.15,29,217/- was Advance Entry Tax for the period 2017-18 and this amount was adjusted by the petitioner in the month of April, 2017 in their VAT Tax return.

4. Attention of this Court has been drawn towards the copy of the '*chalan'* dated 28.03.2017 and a copy of the VAT Return annexed as Annexure-1 Series to the writ application.

5. Learned counsel submits that the petitioner was issued notice to appear for the period 2017-18, the petitioner appeared and produced all the documents showing that he had paid Advance Entry Tax of Rs.15,29,217/- but the Respondent No. 4 passed the impugned order and issued demand notice without considering the fact that petitioner had already paid one Advance Entry Tax of Rs. 15,29,271.27/- on 28.03.2017.

6. In paragraph '10' of the writ application, the following statements have been made:-

> "10) That the Respondent no. 4 failed to allow advance Entry tax of Rs15,29,271.27 paid on 28.03.2017 itself. Whereas in order dated 31.03.2023 of Vat assessment for

> 2017-18, Respondent accepted payment of Entry tax of Rs 1,26,21,928.00 which includes advance Entry tax of Rs 15,29,271.27.”

7. In response, Mr. Vivek Prasad, learned GP-7 for the State could not answer as to why this payment of Rs.15,29,271.27/- has not been taken into account by the Assistant Commissioner who has passed the impugned order (Annexure ‘2’). In fact, paragraph ‘10’ of the writ application has been answered in paragraph ‘19’ of the counter affidavit in the following terms:-

> “19. That the statements made in Para (10) of the Writ Petition is a matter of record and further submits that the contention of the Petitioner had duly been considered and a speaking Order has been passed against which no appeal has been preferred by the Petitioner yet thereby the assessment order attains finality.”

8. Learned GP-7 accepts that what has been submitted by learned counsel for the petitioner has not been clearly answered in the counter affidavit, however, his submission is that the petitioner has got an alternative remedy of appeal, therefore, this Writ Court need not interfere with the impugned order.

9. We find it difficult to accept the submission of learned GP-7 that the petitioner be relegated to the alternative remedy of the appeal in the facts of the present case where it is evident that the Assistant Commissioner while passing the impugned order has not taken into consideration the material which was available on the record. This amounts to passing the impugned order without consideration of the records and it would fall in the category of the jurisdictional error.

10. We find substance in the submissions of learned counsel for the petitioner. Annexure-2 Series is liable to be set aside on the ground of non-consideration of the materials on the record by the Assistant Commissioner, State Taxes, Special Circle, Patna. The consequential demand notice is liable to be set aside.

11. Accordingly, we set aside the impugned order and the demand notice as contained in Annexure-2 Series.

12. The respondent authorities shall pass an appropriate order afresh after considering entire materials on the record and the submissions which have been noticed by this Court hereinabove.

13. Let such an order be passed within a period of two months from the date of receipt/production of a copy of this order.

14. This writ application stands allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

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