IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1600 of 2024

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M/s Tide Water Company India Ltd. Through its Territory Sales Manager, Manish Kumar, S/o Deepak Kumar, aged 38 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 Commissioner of Commercial Taxes, Special Circle, Patna.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Alok Kumar @ Alok Kr Shahi, Advocate
For the Respondent/s	:	Mr. Vivek Prasad, Government Pleader 7
		Mr. Pratiyush Kumar, AC to GP-7

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 09-04-2025

Heard Mr. Alok Kumar, learned counsel for the petitioner and Mr. Vivek Prasad, learned GP-7 assisted by Mr. Pratiyush Kumar, learned AC to GP-7 for the State.

2. This writ application has been filed seeking issuance of a writ in the nature of Writ of Certiorari to quash and cancel the assessment order dated 31.03.2023 and the demand notice dated 31.03.2023 (Annexure-3 Series) issued under Sections 31, 39(4) of the Bihar Value Added Tax Act (hereinafter referred to as the

'BVAT Act') imposing a tax of Rs.39,95,222.36/- for the period 2017-18.

3. It is the case of the petitioner that it was registered under the Entry Tax Act (in short 'ET Act') and the Value Added Tax Act (in short 'VAT Act') with the Special Circle, Patna Circle, having TIN No. 10010205031. The petitioner filed annual return on 28.03.2019 showing gross turnover of Rs.13,33,23,531.74/- and paid VAT of Rs.1,99,98,529.76/-.

4. It is stated that the petitioner company paid Rs.1,26,21,928.00/- as Entry Tax and Rs.73,76,602.00/- as VAT to the respondents. In this manner, the petitioner paid a total tax of Rs.1,99,98,529.76/- in 2017-18.

5. The grievance of the petitioner is that vide order dated 30.01.2018, the Respondent No. 4 disallowed claim of Entry Tax set off of Rs.23,52,758.48/- taken on closing stock.

6. The petitioner was issued notice to appear and produce the documents. Pursuant to the same, the petitioner appeared, produced the documents and requested Respondent No. 3 to consider the disallowed Entry Tax set off of Rs.23,52,758.48/- of the period 2012-13 as according to the petitioner, it was not set off in the subsequent years and the petitioner is substantially losing interest per day on this amount and moreover, this was the last assessment of VAT period.

7. By the impugned order as contained in Annexure-3 Series, the Respondent No. 4 rejected the request of the petitioner and issued a demand notice imposing a tax of Rs.93,32,647.22/- and interest of Rs.20,39,177.14/- out of which the Respondent No. 4 deducted the amount already paid of Rs.73,76,602.00/-. In this manner, a net demand of Rs.39,95,222.36/- has been raised.

8. Mr. Alok Kumar Shahi, learned counsel for the petitioner submits that on the one hand, the Respondent No. 4 has not allowed the adjustment of Rs.19,56,045.22/- which the petitioner has paid on account of Entry Tax and at the same time, the Respondent No. 4 is imposing interest under Section 39(4) of the BVAT Act for a period of 2085 days. The interest amount imposed is Rs.20,39,177.14/-. It is his submission that if the Respondent No. 4 had allowed the previous Entry Tax set off of Rs.23,52,758.48 of the period 2012-13 then the petitioner was entitled for refund of excess tax and no interest could have been imposed upon him. It is submitted that Respondent No. 4 deliberately did not allow the earlier Entry Tax set off of Rs. 23,52,758.48/- of the period 2012-13 and at this stage, he is ousting the petitioner by not allowing adjustment of the Entry Tax amount and then by imposing interest under Section 39(4).

9. This is against the principles of fair play in action. It is arbitrary and the order as well as the demand as contained in Annexure-3 Series to the writ application are liable to be quashed.

10. Having noticed the submissions on behalf of the petitioner on the earlier occasion when this matter was heard on 10.02.2025, this Court recorded its order dated 10.02.2025 in the following terms:-

> "Mr. Alok Kumar, learned counsel for the petitioner has prima-facie demonstrated from the order as contained in Annexure-2 passed under Sections 31, 33 and 39(4) of the Bihar VAT Act, 2005 for the year 2012-13 that the then Assessing Authority had made it clear that the petitioner will get the benefit of adjustment of the Entry Tax Amount on the closing stocks after sale of the stocks in the coming year. He has further shown to this Court that in the year 2017-18 when the petitioner claimed adjustment of the Entry Tax Amount on the goods sold which were part of the closing stocks of the previous years, the same has been disallowed. It is submitted that the last return filed under the Bihar VAT Act was during the year 2017-18, therefore, in all fairness, equity and justice, the Assessing Authority was obliged to give adjustment of the Entry Tax Amount. It is

submitted that the principle of undue enrichment would equally apply against the Department.

2. Learned counsel submits that he may be granted two weeks' time to place on record some more materials to demonstrate that how the Department is unduly enriching itself by not allowing the Entry Tax credited in the last year of the Bihar VAT Return.

3. Mr. Vivek Prasad, learned GP-7 submits that he will examine this matter and will come back to this Court after seeking appropriate instruction from the competent authority.

4. Learned counsel for the petitioner shall serve copy of the additional affidavit, if any, within two weeks from today and thereafter the Department shall file a rejoinder thereto within next one week.

5. List this matter after three weeks i.e. on 03.03.2025."

11. After the aforesaid order was passed, the petitioner filed a supplementary affidavit. With the supplementary affidavit, a photocopy of the Trading Account of the financial years 2012-13 to 2017-18 and the orders passed by the Assessing Authority in respect of financial years 2013-14, 2014-15, 2015-16 and 2016-17 have been brought on record. Referring to these documents on the record, it is reiterated by learned counsel for the petitioner that the respondents have not adjusted Entry Tax of Rs.23,52,758.48/- of financial year 2012-13.

12. The Respondent No. 4 has filed a supplementary counter affidavit. The statements made in the supplementary affidavit of the petitioner and the documents with which the petitioner has sought to support his statements have not been denied by the answering respondent. A vague statement has been made in paragraph '6' of the supplementary counter affidavit that "with regard to the fact that the respondents have not adjusted Entry Tax of Rs.23,52,758.48/- of financial year 2012-13, with regard to issue of Entry Tax adjustment under VAT, the order has already been passed in the subsequent years."

13. In the opinion of this Court, paragraph '6' of the supplementary counter affidavit only shows a half-hearted approach of the Respondent No. 4 in answering paragraph '3' of the supplementary affidavit filed on behalf of the petitioner in which a specific statement has been made with reference to the orders of the different financial years that the respondents have not adjusted Entry Tax Amount of Rs.23,52,758.48/-.

14. This Court further finds that in paragraph '8' of the supplementary counter affidavit, a plea has been taken on behalf of the Respondent No. 4 that there is no provision under the law to adjust the entry tax payment of closing stock of 2012-13 in 2017-18. This statement of the Respondent No. 4 is liable to be deprecated on the face of his own statement present in the assessment order of the year 2012-13 as contained in Annexure-3 Series. While passing the said order, the Assessing Authority has taken note of the claim of the petitioner of the amount paid on account of the Entry Tax but the Assessing Officer averred in the order interalia "उपरोक्त राशि का सामंजन आने वाले वित्तीय वर्ष में बिक्री की स्थिति में अनुमान्य होगा।..."

15. On the face of his own statement that the adjustment would be available to the petitioner in the coming years on sale of the goods, it would not lie in the mouth of Respondent No. 4 to say that the adjustment cannot be allowed in the year 2017-18 when the assessment order of the year 2017-18 is being passed on 31.03.2023. It is crystal clear from the supplementary counter affidavit of Respondent No. 4 that the Entry Tax Amount paid by the petitioner of which he is seeking adjustment is not under doubt and the petitioner was, in fact, given to understand earlier that he would be given adjustment thereon after sale of the goods in the coming financial year.

16. In our considered opinion, the Respondent No. 4 is required to act fairly by considering the claim of the petitioner for adjustment of the Entry Tax Amount of Rs.23,52,758.48/-. Since he has not considered the same while passing the impugned orders as contained in Annexure-3 Series and arbitrarily imposed an interest amount of Rs.20,39,177.14/-, we deem it just and proper to quash the impugned assessment order and the demand order.

17. We accordingly quash Annexure-3 Series to the writ application. The matter is remitted to the Respondent No. 4 to consider the request of the petitioner for adjustment of the Entry Tax amount keeping in view the discussions and the observations made in this order hereinabove.

18. The said order shall be passed by Respondent No. 4 within a period of three months from the date of receipt/production of a copy of this order.

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

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	15.04.2025
Transmission Date	