**(2021) 11 PAT CK 0043**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 4896 Of 2010

M/S Indian Oil Corporation Ltd APPELLANT

Vs

State Of Bihar RESPONDENT

**Date of Decision :** 25-11-2021

**Acts Referred:**

Bihar Value Added Tax Rules, 2005 — Rule 28
Bihar Value Added Tax Act, 2005 — Section 6, 40, 40(1), 40(5)

**Citation :** (2021) 11 PAT CK 0043

**Hon'ble Judges :** Sanjay Karol, CJ;S. Kumar, J

**Bench :** Division Bench

**Advocate :** S.D.Sanjay, Parul Prasad, Priya Gupta, Mohit Agarwal, Vikash Kumar

**Final Decision :** Disposed Of

# Judgement

Petitioner has prayed for the following reliefs: -

"i) For a declaration that Section 40 of the Bihar VAT Act, 2005 is ultravires the provisions of the Constitution of India for having failed to provide any mechanism for non-deduction of Advance Tax on the transaction of sale of goods made in Bihar by the Supply Contractors from outside the State as being beyond the tax collecting power of the State Government & its Taxing Authorities;

ii) For a declaration that Section 40 of the Bihar VAT Act, 2005 providing for advance deduction of tax in the manner being contrary to the Judgment of the Hon'ble Apex Court in the case of Steel Authority of India Ltd. vs. State of Orissa & Ors. 2000(3) SCC 200 reiterated in the case of Nethpa Jharki Joint Venture vs. State of Himachal Pradesh & Ors. reported in 2000(3) SCC 319 as such ultra vires the Constitution of India;

iii) For a declaration that Section 40 of the Bihar VAT Act, 2005 has not become workable in absence of Notification prescribing the rate of tax for deduction as Advance Tax on the amount of payment to the Supply Contractors;

 

iv) For a declaration that since the provision of Section 40 of the Bihar VAT Act, 2005 is not workable as such it cannot be imposed as it doesn't cast any obligation upon any person taking supply to make any deduction on the payment to the Supply Contractors, and as such, no any penal action is wholly without jurisdiction for lack of any authority;

v) For a declaration that Rule 28 of the Bihar VAT Rules, 2005 is ultravires as it does not provide for any mechanism for non-deduction of tax on the sale of goods made by a Supply Contractors from outside the State;

vi) For a declaration that the Proviso to Rule 28 of the Bihar VAT Rules, 2005 is ultra vires since it vests arbitrary & unguided power in the Sales-tax Authorities to deny Declaration Form-C-III to a Registered dealer;

vii) For quashing of the Order dt. 22.02.2010 passed by the Learned Commissioner of Commercial Taxes, Bihar, Patna (Respondent No. 1) in Revision Case No. CC(s)-61/2009-10 by which he has been pleased to mechanically affirm the Order of Penalty against the Petitioner which was passed by the Respondent No. 2;

viii) For quashing of the Order dt. 3.09.2009 passed by the Learned Dy. Commissioner of Commercial Taxes, Begusarai Circle, Begusarai (Respondent No. 2) by which he has been pleased to pass an Order of Penalty in purported exercise of power u/s 40(5) of the Bihar VAT Act, 2005 to the tune of Rs.8.9 Crore as being wholly without jurisdiction, arbitrary, malafide and illegal, and hence, liable to be interfered with; and for any other relief(s) for which the Petitioner may be found entitled to in the facts and circumstances of the present case."

After the matter was heard for some time, a suggestion fell from the State that the matter be remanded back to the assessing authority for consideration of all issues, both on fact and law, in view of the intervening developments which have taken place, with at least one of the vendors, who was subjected to the provisions of Bihar Value Added Tax Act, 2005 (hereinafter referred to as the Act) and has been issued No Dues Certificate (discharge the liability of E.T. Settlement and encashment).

On the other hand, Shri S.D. Sanjay, learned Senior Advocate, submits that out of three vendors, at least two have been subjected to the provisions of the Act and have cleared their liability. It is also argued that the order suffers from the vice of violation of principles of natural justice, to have been passed by (a) not assigning any reasons; (b) not dealing with the factum of the goods exempted by virtue of the provisions of Section-6 of the Act; (c) the petitioner not being subjected to any liability under Section 40 (5) of the Act in view of non-issuance of any notification under Section-40(1) of the Act.

We are of the considered view that on all counts the matter needs to be remanded to the assessing authority, reserving liberty to the parties to raise all pleas before the said officer enabling him to take a decision at the earliest.

We are also informed that vide impugned order dated 3rd of September, 2009, the assessing officer has not dealt with any of the issues raised before this Court and the order of the revisional authority, to say the least, is absolutely cryptic, not dealing with any one of the issues raised in the revision petition and assigning any reasons in affirming the order passed by the appellate authority. The revisional authority has simply reproduced the facts and dismissed the petition by a single sentence, without expressing any opinion. The order, thus, borders perversity and illegality.

In view of the same, we quash and set aside the impugned order dated 3rd of September, 2009, passed by the Deputy Commissioner of Commercial Taxes, Begusarai Circle, Begusarai in Case No. 01/09-10, as also the order dated 22nd of February, 2010, passed by Commissioner of Commercial Taxes, Bihar, Patna in Revision Case No.CC(s)-61/2009-10, titled as M/s. Indian Oil Corporation Ltd., Barauni, Begusarai Vs. Deputy Commissioner of Commercial Taxes, Begusarai Circle, Begusarai, with further directions (a) the petitioner shall make himself available in the office of the assessing officer on 20.12.2021 at 10:30 a.m.; (b) within two weeks thereafter, the parties shall place additional material in support of their respective contentions; (c) parties shall fully cooperate and not take any unnecessary adjournment; (d) the assessing officer shall pass an order assigning reasons positively, within a period of two months thereafter and (e) liberty reserved to the petitioner to take recourse to such remedies as are available, should the need so arise subsequently.

We notice that vide interim order dated 25th of March, 2010, petitioner had deposited 30% of the amount imposed as penalty in terms of the impugned order dated 3rd of September, 2009. If ultimately petitioner succeeds, the said amount shall be remitted into the petitioner's bank account within a period of four weeks thereafter.

All questions of fact and law are left open to be considered by the assessing officer.

The petitioner shall furnish the details of all the goods purchased from the three vendors, namely (1) Linde Engineering India Pvt. Ltd (2) Punj Lloyd Ltd. and (3) Paharpur Cooling Tower Ltd.

Equally, it shall be open for the assessing officer to call for the records of their assessment.

The petition stands disposed of in the aforesaid terms.

Interlocutory application, if any, shall also stand disposed of.