(2020) 08 PAT CK 0077

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 928 Of 2009

M/S Shree Pawan Putra Agencies APPELLANT

Vs

State Of Bihar And Ors RESPONDENT

Date of Decision : 31-08-2020

Acts Referred:

Bihar Value Added Tax Act, 2005 — Section 32(1)(c)
Constitution Of India, 1950 — Article 14, 19(1)(g), 246, 301, 304

Citation : (2020) 08 PAT CK 0077

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

Bench : Division Bench

Advocate : Ramesh Kumar Agrawal, Vikash Kumar

Final Decision : Disposed Of

Judgement

Petitioner has prayed for the following relief/s:

â??(i) To declare the Bihar Tax on Entry of goods into local areas for consumption, use or sale therein (Amendment and Validation) Act, 2008 (Act

No.13 of 2008) dated 15.04.2008 (hereinafter referred to as â??the Amendment and Validation Act, 2008 only) (Annexure-9), as ultra vires Articles

14, 19(1) (g), 246, 301 and 304 of the Constitution of India.

(ii) To declare the Bihar Tax on Entry of goods into local areas for consumption, use or sale therein (Amendment and Validation) Act, 2007 (Act

No.12 of 2007) dated 19.04.2007 (hereinafter referred to as â??the Amendment and Validation Act, 2007 only) (Annexure-8), as ultra vires Articles

14, 19(1)(g), 246, 301 and 304 of the Constitution of India.

(iii) To issue a writ of certiorari for quashing exparty best judgment assessment and penalty order dated 22.10.2008 (Annexure-10) passed by the respondent Commercial Taxes Officer by which Rs.11,92,400.24 has been imposed as entry tax and also Rs.35,77,200.72 as penalty under Section

32(1)(c) of the Bihar Value Added Tax Act, 2005 and also for quashing the notice of demand bearing No.9537 dated 22.10.2008 (Annexure-11)

issued by Total Rs.47,69,601/-

(iv) For issuance of an appropriate writ(s), order(s) or direction(s) to the respondents for restraining them from making any demand of entry tax and

penalty from the petitioner firm.

(v) To any other relief or reliefs for which the petitioner is found entitled to in the facts and circumstances of the case.â??

It is not in dispute that the question of law with regard to validity of the statutes now stands settled by Honâ??ble the Apex Court in Jindal Stainless

Ltd. & Anr. Vrs. State of Haryana & Ors., (2017) 12 SCC 1.

Thus, the only surviving issue is as to whether the impugned order dated 22nd of October, 2008 passed by the Commercial Tax Officer (Annexure-10)

determining the liability of tax; interest; as also penalty can be said to be perverse or not. Also, the consequential notice of demand needs to be

quashed or not.

It is evident from perusal of the impugned order itself that no reason in determining the amounts of tax/interest of penalty has been assigned. Also, no

opportunity of hearing was afforded.

Undisputedly, the order, cryptic in nature, entails civil consequences, as such, we quash and set aside the same and remand the matter back to the

authority for consideration afresh.

The liability being an old one, pertaining to the year 2006-07, we dispose of the present petition giving following directions:

(a) Impugned order dated 22nd of October, 2008 passed by the Commercial Tax Officer (Annexure-10) is quashed and set aside and consequential

notice of demand bearing No. 9537 dated 22.10.2008 (Annexure-11) also stands quashed;

(b) The matter is remanded back to the authority concerned for reconsideration afresh.

(c) The authorized representative of the petitioner shall remain present in the office of the Assessing Officer at 10:30 A.M. on 5th of October, 2020.

However, if on account of the prevalent attending circumstances, physical presence is not possible, such attendance can be through digital mode for

which a link shall be sent.

(d) Learned counsel for the petitioner shall supply the particulars of the e-mail I.D. as also the mobile number on which such link is required to be

sent. This, he shall do before 5th October, 2020.

(e) Learned counsel for the State undertakes to ensure compliance of the order.

(f) Petitioner undertakes to fully cooperate and not take any unnecessary adjournment.

(g) The proceedings be expedited and in any event shall be completed within a period of two months from the date of first appearance.

(h) All issues on merit are left open.

Petition is disposed off in the aforesaid terms.

