

(2021) 03 PAT CK 0352

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7419, 7428 Of 2019

M/S Tata Project Ltd

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 15-03-2021

Acts Referred:

Bihar Tax On Entry Of Goods Into Local Areas For Consumption, Use Or Sale Therein Act, 1993 — Section 8

Bihar Value Added Tax Act, 2005 — Section 31(2)

Citation : (2021) 03 PAT CK 0352

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

Bench : Division Bench

Advocate : Anurag Saurav, Abhinav Alok, Priyajeet Pandey, Vikash Kumar

Final Decision : Disposed Of

Judgement

Petitioner has prayed for the following relief(s):

"i) For issuance of appropriate writ or writ in the nature of certiorari for quashing of order dated 05.02.2019 passed by Assistant Commissioner Commercial Taxes, Patliputra Circle, Patna whereby and where under Assistant Commissioner, Patliputra Circle had passed order dated 05.02.2019 under section 8 of Bihar Entry Tax Act read with section 31(2) of Bihar VAT Act for the financial year 2016-17 and imposed penalty on the petitioner amounting Rs. 14,85,685/- and the said penalty has been imposed on the petitioner on presumption that petitioner had purchased stone chips and not paid entry tax and due to non payment of entry tax vide order dated 31.12.2018 a tax amounting Rs.4,95,228/- Whereas during course of hearing petitioner produce the entire books of record to established the fact that the petitioner had not purchase any stone chips and in spite of demand made by the petitioner for providing the sources of information, respondent contrary to record the on presumption imposed tax on the petitioner

ii) For quashing of demand notice issued vide memo bearing Memo no.

N120466131095044 dated 07.02.2019 issued under the signature of Assistant Commissioner, Commercial Taxes, Patliputra Circle, Patna whereby and where under a demand of Rs. 14,85,685/- was raised in favour of petitioner.

iii) For restraining the respondent authorities from recovery of the amount Rs. 14,85,685/- demanded by respondent authorities through demand notice dated 07.02.2019.

iv) For issuance of appropriate writ in the nature of mandamus directing the respondent authorities to provide the source of information to the petitioner with regard to the allegation raised against the petitioner for evasion of tax during purchase of stone chips and the Assessing Officer initiated a proceeding under section 31(2) of Bihar VAT Act, for suppression or concealment of sale of stone chips without providing the source of information and without considering the settled preposition by the Apex Court that burden of proving that any turn-over which is considered as escaped turn-over and has been under assessed etc. is on the department.

v) For issuance of any other appropriate writ (S), order(s) and direction(s) as your Lordship may deem fit and proper in the facts and circumstances of the case."

Having heard learned counsel for the parties, as also perused the record, we are in agreement with Sri Anurag Saurabh, learned counsel for the petitioner, that the principles of natural justice, in passing the order stands violated inasmuch as it is only during the pendency of the present writ petition, the documents stand supplied to the petitioner. Prior to the passing of the impugned order, no adequate opportunity of hearing was afforded.

Also, we are of the view that the impugned order dated 5.2.2019 passed by the Respondent No.3, the Assistant Commissioner, Commercial Taxes, Patliputra Circle, Patna needs to be quashed and set aside, for the same to have been passed without following the principles of natural justice. In terms of the impugned order, financial liability stands fastened. Thus, it entails civil consequences, seriously prejudicing the petitioner inasmuch as, without affording any adequate opportunity of hearing or assigning any reason he is liable to pay certain sums to the government.

At this stage, Shri Anurag Saurabh, learned counsel for the petitioner states that without prejudice to the respective rights and contentions of the parties and to establish his bonafide, petitioner is ready and willing to deposit a sum of Rs. 1 lac with the appropriate authority within a period of two weeks from today.

Statement accepted and taken on record.

It stands clarified that deposit of such amount would be without prejudice to the respective rights and contentions of the parties and the order which the authority may pass upon the matter being remanded for consideration afresh.

As such, purely on a limited ground, we quash and set aside the impugned order dated 5.2.2019 passed by the Respondent No.3, the Assistant Commissioner, Commercial Taxes, Patliputra Circle, Patna for the financial year 2016-17 under Section 8 of Bihar Entry Tax Act read with Section 31(2) of Bihar VAT Act, as contained in Annexure-9, with further mutually agreeable directions that- (a) the petitioner shall deposit a sum of Rs. 1 lac with the authority on or before 5th of April, 2021; (b) the petitioner shall appear before the authority on 5th of April, 2021 in his office at 10:30 A.M., on which date he shall place on record additional material, if so required and desired; (c) also, further opportunity shall be afforded to the parties to place additional material, if so required and desired; (d) petitioner undertakes to fully cooperate and not take any unnecessary adjournment; (e) since the proceeding pertains to financial year 2016-17, the authority shall decide the matter on merits, in compliance of the principles of natural justice, on or before 17th May, 2021; (f) If aggrieved, liberty reserved to the parties to take recourse to such remedies as are otherwise available in accordance with law; (g) we have not expressed any opinion on merits and quashed the order only on the ground of violation of principles of natural justice. (h) if necessary, proceedings during the time of current Pandemic [Covid-19] would be conducted through digital mode; (i) needless to add, with the passing of the order, if it is eventually found that deposit made by the petitioner is in excess of the amount determined due and payable, the same shall positively be refunded expeditiously as per law.

The instant petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, shall stand disposed of.