(2022) 07 PAT CK 0039

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 18164 Of 2018

M/S Tata Project Ltd APPELLANT

Vs

State Of Bihar RESPONDENT

Date of Decision : 13-07-2022

Acts Referred:
Bihar Entry Tax Act, 1993 — Section 8
Bihar Value Added Tax Act, 2005 — Section 31, 33

Citation : (2022) 07 PAT CK 0039

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

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

“1 (i) For issuance of appropriate writ or writ in the nature of certiorari for quashing of order dated 06.06.2018 passed under section 8 of Bihar Entry Tax Act, 1993 read with section 33 of Bihar Value Added Tax Act 2005 passed by Assistant Commissioner of Commercial Taxes, Patliputra Circle, Patna Whereby and Whereunder Assistant Commissioner of Commercial Taxes, Patliputra Circle had passed and order without considering reply and explanation dated 20.04.2018 filed by the petitioner in pursuance to the objection raised by Audit Department for the Financial Year 2010-11 and the above mention order has been passed without considering the reply cum-objection filed by the petitioner and without considering the fact that for financial year 2010-11 assessment has already been made by the respondent authorities under section 8 of Bihar Entry Tax Act 1993 read with section 31 of Bihar VAT Act 2005 and a tax amounting Rs. 5,06,01,512.33/- has been imposed vide order dated 27.01.2014 and petitioner’s company has deposited an amount of Rs. 2,02,40,604/- and filed appeal before Joint Commissioner Appeal (Central) Division and vide order dated 09.12.2015 Joint Commissioner Appeal disallow the claim of petitioner with regard to sale in transit and petitioner company against the order passed by Assessing Officer as well as Appellate Authority filed an appeal before the Commercial Tax Tribunal and while the subject matter was subjudice before Appellate Tribunal, Assessing Officer has imposed further tax for the same financial year i.e. 2010-11 on re-assessment and a fresh demand of Rs. 6,53,742/- has been issued.

(ii) For quashing of demand notice dated 06.06.2018 under the signature of Assistant Commissioner of Commercial Taxes, Patliputra Circle, Patna whereby and where under a demand of Rs. 6,53,742/- has been issued in favour of petitioner and respondent authorities have been directed to deposit the aforesaid amount till 05.07.2018.

(iii) For issuance of writ in the nature of certiorari for quashing of Audit objection raised by the Respondent no.4 whereby and where under the Audit Department has selected the petitioner company for Audit without any notice and tax was imposed vide order dated 06.02.2014 without issuing any notice and providing any opportunity of hearing to the petitioner, while passing the order Respondent no.4 not considered the fact that the assessment order for the financial year 2010-11 has been challenged before Commercial Taxes Tribunal, Patna and reassessment was made by Assessing Officer after four years from the audit objection raised by Respondent no.4, as audit objection was raised on 06.02.2014 and reassessment order was passed on 06.06.2018.

(iv) 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.”

In relation to the Assessment Year 2009-10, 2010-11, 2011-12 and 2012-13, the Revenue has issued certain orders assessing the amount due and payable by the petitioner.

Noticeably, all these assessments pertain to and arise out of the original order of assessment passed in relation to the Financial Year 2009-10. The said order was passed under Section 31 of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as the “Act”).

Aggrieved of the original order of assessment, petitioner preferred an appeal and now the matter is pending adjudication with the Tribunal constituted under the said Act.

During pendency of the adjudicatory proceedings, be it before the appellate forum or the Tribunal, the Revenue, in exercise of its power under Section 33 of the Act, carried out fresh assessments, pursuant to the audit objection, revising the original order of assessment, now pending adjudication before the Tribunal. It is in relation to such action that several orders stand passed, which are subject matter of the instant petitions.

Having heard learned counsel for the parties at length, we are of the considered view that this petition can be disposed of, as is mutually agreed, on the following terms:-

(a). The petitioner shall deposit a sum of Rs. 50,00,000/- (fifty lacs only), over and above the amount already deposited with the Revenue, be it pursuant to the orders passed by the Appellate Authority or the Tribunal;

(b) The said deposit shall be without prejudice to the respective rights and contentions of the parties and subject to the outcome of the proceedings pending before the Tribunal;

(c) If eventually it is found that the appellant is entitled for refund of the amount, the same shall be so done within a period of eight weeks from the date of the order attaining finality;

(d) Needless to add, the appellant shall be entitled to interest thereupon in terms of and under the provisions of the Act;

(e) Till such time the order is passed by the Tribunal, no coercive action shall be taken/precipitated against the petitioner;

(f) All issues, subject matter of the present petition, shall be raised by the parties before the Tribunal with a request to adjudicate the same at the earliest;

(g) Parties, and more specifically the petitioner, undertakes to fully cooperate and not take any unnecessary adjournment;

(h) We request the Tribunal to decide the matter expeditiously, and preferably within a period of 2/3 months from the date of placing a copy of the order;

(i) In fact, we direct the petitioner to appear before the Tribunal on 25th of July, 2022.

(j) Deposit be made before the Tribunal within 15 days from today;

The instant petition stands disposed of in the aforesaid terms.

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