(2021) 10 PAT CK 0038

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 18547 Of 2021

Pidilite Industries Limited — APPELLANT

Vs

State Of Bihar — RESPONDENT

Date of Decision : 27-10-2021

Acts Referred:
Bihar Value Added Tax Act, 2005 — Section 31, 33, 39(4)

Citation : (2021) 10 PAT CK 0038

Hon'ble Judges : Sanjay Karol, CJ;A. M. Badar, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

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

i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing the order dated 26.03.2021 (Annexure 12) passed by the Deputy Commissioner State Tax, Special Circle Patna, pertaining to the year 2009-2010, whereby and where under upon remand of the matter from Joint Commissioner, the Deputy Commissioner has rejected the classification of goods by the petitioner and disallowed the deduction for sale returns and imposed a tax liability of Rs. 23,28,853.86/- and also levied interest of Rs.20,61,035.67/-, on wholly erroneous grounds.

ii) To issue an appropriate writ, order or direction in the nature of certiorari for quashing the demand notice dated 26.03.2021 (Annexure 13) issued to the Petitioner in Form N-VIII by the Assistant Commissioner State Tax, Special Circle Patna.

iii) To issue an appropriate writ order or direction in the nature of certiorari for quashing the second assessment order dated 14.02.2015 passed by the Assistant Commissioner State Tax, Special Circle Patna under section 31 of the Bihar VAT Act.

iv) To issue an appropriate writ order or direction in the nature of mandamus for commanding the Respondents to refund the amount of Rs.39,89,402/- deposited by the petitioner before the appellate authority in seeking stay of second assessment order dated 14.02.2015 passed by the Assistant Commissioner State Tax, Special Circle Patna under section 31 of the Bihar VAT Act.

v) To issue an appropriate writ, order or direction in the nature of mandamus commanding the Respondent to bring on record the audit objection of the Accountant General (Audit), Bihar pursuant to which order dated 08.11.2012 was passed under section 33 of the Bihar VAT Act 2005 and thereafter to quash on the ground that the same is sans any legal authority.

vi) During the pendency of this writ application to issue an appropriate writ, order or direction in the nature of mandamus commanding the Respondents not to take any coercive steps against the petitioner for the recovery of disputed tax amount, and interest.

vii) This Hon'ble Court may adjudicate and hold that second assessment order cannot be passed under section 31 of the Bihar Value Added Tax Act 2005.

viii) This Hon'ble Court may further adjudicate and hold that the action of Respondents in initiating a second assessment proceeding under section 31 of the Bihar Value Added Tax Act 2005 is completely dehors the enactment.

ix) This Hon'ble Court may further adjudicate and hold that the respondents cannot shrug off their responsibility to decide the classification related dispute concerning the products of the petitioner conclusively.

x)This Hon'ble Court may further adjudicate and hold that levy of interest in a demand arising out of change in opinion is arbitrary, illegal and void, that too when there is neither any shortfall in payment of tax admitted nor any concealment of sale or purchase in return.

xi) This Hon'ble Court may further adjudicate and hold that the order of Deputy Commissioner State Tax, Special Circle Patna, imposing interest upon the petitioner is completely unjust, illegal and de-hors the provisions of the Bihar Value Added Tax Act, 2005 as the case of the petitioner is not covered under section 39(4) of the Bihar Value Added Tax, 2005.

xii) This Hon'ble Court may further adjudicate and hold that interest under section 39(4) of the Bihar Value Added Tax, 2005 can only be levied when a dealer has a) wrongly claimed either the whole or part of his turnover as not taxable and, has consequently, paid lesser amount of tax than payable by him; or (ii) wrongly declared his turnover or any particulars thereof and thereby has reduced the amount of tax payable under this Act; or (iii) wrongly claimed input tax credit in excess of what he is entitled to under this Act.

xii) This Hon'ble Court may further adjudicate and hold that since the petitioner has not concealed any particulars of sale/purchase, or wrongly declared its turnover, or wrongly claimed input tax credit, the levy of penalty and interest is not justified.

xiv) This Hon'ble Court may further adjudicate and hold that since the department has accepted the classification of goods by the Petitioner in its returns, the assessing officer cannot take different opinion with regard to the same merely on the basis of an Audit Objection and treating the same to be sacrosanct.

xv) This Hon'ble Court may further adjudicate and hold that from the facts and circumstances of the case, it is evident that the intention of the Respondents is not to decide the matter on merits but elongate the life of the litigation without serving the cause of justice.

xvi) To grant any other relief or reliefs for which the petitioner is found entitled in the facts and the circumstances of the case.

On a pointed a query as to why the petitioner has not preferred the statutory appeal, Shri Suraj Samdarshi, learned counsel for the petitioner states that the appellate authority, in all likelihood, as was so done earlier, would remand the matter to the Assessing Authority, and not decide the issue itself. He further points out that the issue is purely legal and that the appellate authority is competent to take a view with regard to the same. Also, all issues of fact are and can be decided by the appellate authority.

Looking into the record as placed before us, we are in agreement with the submission made on behalf of the petitioner. The matter pertains to the year 2009-10 and parties cannot be allowed to litigate, more so when the issue can be resolved by the authority.

At this stage, Shri Suraj Samdarsi states that the petitioner does not press the present petition on merits reserving liberty to file an appeal within a period of four weeks from today. However direction be issued for expeditious disposal of appeal.

Shri Vikash Kumar, learned S.C.-11 states that if the appeal is preferred within the said period, the issue of limitation would not come in the way of the petitioner and the appeal would positively be heard and decided on merits, in accordance with law.

Statement accepted and taken on record.

As such, we dispose of the present petition on the following terms:-

(a) Petitioner shall file appeal, if not already filed, within a period of four weeks from today;

(b) Petitioner shall comply with the condition of pre-deposit for hearing of the appeal. If that were so, the appeal shall be decided on merits. However, if the amount is not deposited for whatever reason(s), same shall be done before the next date;

(c) This deposit shall be without prejudice to the respective rights and contention of the parties and subject to the order passed by the Appellate Authority. However, if it is ultimately found that the petitioner's deposit is in excess, the same shall be refunded within two months from the date of passing of the order;

(d) We also direct for de-freezing/de-attaching of the bank account(s) of the writ-petitioner, if attached in reference to the proceedings, subject matter of present petition. This shall be done immediately.

(e) Petitioner undertakes to appear before the Appellate Authority on 15th November, 2021 at 10:30 A.M., if possible through digital mode;

(f) The Appellate Authority shall condone the delay in filing the appeal and decide the appeal on merits after complying with the principles of natural justice and not remand the matter to the Assessing Authority;

(g) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

(h) During pendency of the appeal, no coercive steps shall be taken against the petitioner.

(i) The Appellate Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(j) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(k) The Appellate Authority shall decide the appeal on merits expeditiously, preferably within a period of three months from the date of appearance of the petitioner;

(l) The Appellate Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

(m) Liberty reserved to the petitioner to challenge the order, if required and desired;

(n) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(o) We are hopeful that as and when petitioner takes recourse to such remedies, before the appropriate forum, the same shall be dealt with, in accordance with law, with a reasonable dispatch;

(p) We have not expressed any opinion on merits and all issues are left open;

(q) If possible, proceedings during the time of current Pandemic [Covid-19] be conducted through digital mode;

We are constrained to pass such an order, as already observed supra that the matter pertains to the year 2009-10 as such appeal be positively decided within a period of three months from the date of its filing along with a copy of this order.

The instant petition sands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, also stands disposed of.

Learned counsel for the respondents undertakes to communicate the order to the appropriate authority through electronic mode.