(2020) 12 PAT CK 0161

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4007, 4038 Of 2019

Saj Food Products Pvt. Ltd APPELLANT

Vs

State Of Bihar And Ors RESPONDENT

Date of Decision : 17-12-2020

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

Citation : (2020) 12 PAT CK 0161

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

Bench : Division Bench

Advocate : Gautam Kumar Kejriwal, Vikash Kumar

Final Decision : Disposed Of

Judgement

The petitioner has prayed for following relief(s):

1. (a) For issuance of a writ in the nature of certiorari for quashing of the order of assessment dated 22.01.2019 and the consequent demand notice

dated 22.01.2019 passed and issued by the respondent Joint Commissioner of State Taxes Special Circle Patna whereby demand of tax has been

raised against the petitioner fort financial year 2016-17 by reopening the assessment already concluded on the basis of mere change in opinion and no

fresh material in hands;

(b) For issuance of a writ in the nature of certiorari for quashing of the order dt. 30.01.2019 and the consequent demand notice whereby penalty has

been imposed upon the petitioner with respect to financial year 2016-17 U/s 31(2) of the Act on the basis of mere change in opinion;

(c) For holding and a declaration that the petitionerâ??s case is covered by the judgment of the Honâ??ble Supreme Court in the matte of Income

Tax Officer Ward Number 16(2) Versus Techspan India Private Ltd And Another reported in 2018-6-SCC-685 and also the judgments of the this

Honâ??ble Court in the matter of Samsung Electronics India Ltd Vs The State of Bihar and Others and Reckitt Benckiser India Ltd versus the State

of Bihar and Others;

(d) For holding and a declaration that once the petitioner has been reassessed under section 31 of the Bihar Value Added Tax Act, 2005 (hereinafter

referred to as the Act for short) no further reassessment could be permissible within the same section by assessing authority in the same office on the

basis of mere change in opinion over the same commodity, classification, rate of tax, tax assessment done by his predecessor in office vide order

dated 10.09.2018 passed for the same financial year 2016-17;

(c) For holding and a declaration that such an exercise of reopening of a reassessment order already passed under section 31 of the act would be

barred by the principles of res judicata as the said exercise would be for the same set of facts, cause, figures and same financial year for which the

predecessor in the office has already taken a view and decided the issue in a particular manner on the basis of his wisdom, opinion, rational and

understanding;

(f) For holding and a declaration that classification of a particular commodity for the purpose of taxation and the rate of tax applicable there on is a

pure issue of oneâ??s understanding, knowledge and satisfaction and any difference between one Assessing Authority and the other would be a

mere change in opinion and will have no recognition in the eye of law for the purpose of reopening of the assessment order once passed by one

particular authority;

(g) For holding and a declaration that the difference of opinion between one assessing authority of the respondent department and another cannot be

form basis for imposition of penalty attracted U/s 31(2) of the act against the petitioner as the petitioner has not concealed any part of the turnover of

the said financial year;

(h) For restraining the respondents from enforcing the impugned order of assessment and the consequent demand notice whereby the petitioner has

been called upon to pay the demand tax liability raised by reopening the assessment order dated 10.09.2018 passed under section 31 of the act by the predecessor in office;

(I) For grant of any other relief or reliefs to which the petitioner is found entitled to in the facts and circumstances of the case.â??

Undisputedly, petitioner, at this point in time, and during the pendency of the present lis, without prejudice to the respective rights and contentions, has

filed an application for settlement, a mechanism provided under the statute.

As such, Shri Gautam Kumar Kejriwal, learned counsel for the petitioner, prays for disposal of the present petition with a direction to the authorities to

dispose of such application for settlement pending consideration, granting the liberty to file a fresh petition, if the need so arises on the same and

subsequent cause of action.

Learned counsel for the respondent has no objection to the same. In fact, Shri Vikash Kumar, learned Standing Counsel No. 11 states that the

application for settlement shall be considered and decided positively within the current financial year i.e. 2020-2021.

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

(a) the authority concerned shall consider and decide the application for settlement positively within the current financial year i.e. 2020-21, of course,

in compliance of the principles of natural justice; petitioner shall appear before the authority on 26th of December, 2020;

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

(c) we are hopeful that as and when petitioner takes recourse to such remedies, as are otherwise available in law, before the appropriate forum, the

same shall be dealt with, in accordance with law and with reasonable dispatch;

(d) if necessary, proceedings during the time of current Pandemic [Covid-19] would be conducted through digital mode;

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

(f) liberty reserved to the petitioner to file a fresh petition on the same and subsequent cause of action, if the need so arises.

The instant petition sands disposed of in the aforesaid terms.

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

