

(2019) 03 PAT CK 0034

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6124 Of 2019

Samsung India Electronics Private Limited

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 28-03-2019

Acts Referred:

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

Bihar Value Added Tax Rules, 2005 — Rule 46(1)(4)(iii)

Citation : (2019) 03 PAT CK 0034

Hon'ble Judges : Jyoti Saran, J;Arvind Srivastava, J

Bench : Division Bench

Advocate : Gautam Kumar Kejriwal, Atal Bihari Pandey, Rahul, Alok Kumar Jha, Vikash Kumar

Final Decision : Allowed

Judgement

Arvind Srivastava, J

Heard Mr. Gautam Kumar Kejriwal, learned counsel appearing for the petitioner and Mr. Vikash Kumar, learned Standing Counsel No.11 for the State.

The petitioner is aggrieved by that part of the order bearing Memo No. 794 dated 06.03.2019, whereby the petitioner has been directed to deposit a sum of Rs.1,31,97,300/-which is about 30.55% of the penalty amount imposed on the petitioner by the Assessing Authority in exercise of powers vested under Section 31 (2) of the Bihar Value Added Tax Act, 2005 (hereinafter referred to as 'the Act') and has been put to question before the Appellate Authority i.e. the Joint Commissioner, Commercial Taxes (Appeal), Central Division, Patna.

For the moment we would not enter into the merits of the contest as to whether the petitioner is liable to pay any penalty because the matter is pending before the Appellate Authority but we definitely do find merit in the contention of the petitioner as regarding the condition of pre-deposit for the purpose of interim order, for two reasons, namely:

(a) The Appellate Authority himself acknowledges in the impugned order that a sum of Rs.8,51,48,626/- has been deposited in excess by the petitioner towards tax; and

(b) Even when Rule 46(1) of the Bihar Value Added Tax Rules, 2005 framed under 'the Act' permits an assessee to pray for interim relief in the matter as against the assessment of tax penalty or interest, sub-rule (4)(iii) thereof vests discretion in the appellate authority or the revisional authority as the case may be, to set up such terms and conditions as deem it fit and proper for stay of recovery of tax and interest but such discretion for directing any pre-deposit or set up terms/conditions is not extended in respect of similar interim prayer for staying penalty recovery proceedings.

In other words, the legislature has been conscious while conferring a right in the assessee to pray for interim relief pending statutory appeal questioning an order of assessment, interest or a penalty and even though a discretion is vested in the Appellate Authority and the Revisional Authority to set up such terms and conditions as deem proper while considering application for stay of tax and interest but no such discretion to set up terms and conditions is present in so far as the prayer for stay of penalty is concerned. Meaning thereby either the Appellate Authority can accept or reject the prayer for interim stay but in case he is persuaded with the prayer so made then he cannot set up conditions therefor.

In such circumstances and since we do note the excess deposit of tax made by the petitioner, that the issue, whether or not the petitioner has made himself liable for penalty, is pending before the Appellate Authority, we direct the Joint Commissioner, Commercial Taxes (Appeal), Central Division, Patna to dispose of the appeal of the petitioner in accordance with law without coercing him for pre-deposit of the amount as found in the order impugned for the purpose of grant of interim stay and which order of penalty shall remain in abeyance and which amount of penalty so imposed would be governed by the final outcome of the appeal pending before the Appellate Authority.

Since it is stated at the Bar that the appeal is already fixed for 12.06.2019 for final disposal, the Appellate Authority shall dispose of the matter as per the stipulations above.

With the observation and direction above, the writ petition is allowed.