

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7200 of 2020

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M/s VST Industries Limited Through Sri Phani K Mangipudi, S/o M.V. Subba Rao aged about 40 years, R/o Hyderabad, Company Secretary and Head- Legal and Secretarial, having its office at Azamabad, Hydrabad- 500 020 And having Office at Gate No. 1, Shalimar Cold Storage Compound, New by Pass Road, Anishabad, Patna- 800 002.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner State- Tax- cum- Secretary, Commercial Tax Department, Bihar, Vikash Bhavan, Bailey Road, Patna.
2. The Joint Commissioner of State Taxes, Special Circle, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. S. Ganesh, Senior Advocate
Mr. Jayanta Ray Chaudhury, Adv.
Mr. Binay Kumar, Advocate

For the Respondent/s : Mr. Vikash Kumar, SC 11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-07-2020

Petitioner has prayed for the following relief(s):

- “(a) For a Writ of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the case and after scrutinizing the same, to strike down and quash the impugned order dated 24/06/2020 passed under the Bihar Settlement of Taxation Disputes Act 2019 (hereinafter the said Act/Settlement Scheme) and the Bihar Settlement of Taxation Dispute Rules 2020 (hereinafter, the said Rules) for the Assessment Period 2010-2011.
- (b) For a Writ of Mandamus or any other appropriate Writ, Order or direction, ordering and directing the respondents to accept the settlement application filed by the Petitioner under the said Act and Rules and accordingly to settle the Entry tax liability of the Petitioner.



- (c) For that, pending the final hearing and disposal of this Petition, the operation of the impugned order dated 25/6/2020 be stayed by this Hon'ble Court.
- (d) For such further order or orders and reliefs as this Hon'ble Court may consider appropriate, in the circumstances of the case.”

2. The State Legislature enacted the Bihar Tax on Entry of Goods into Local Area For consumption, Use and Sale Therein Act, 1993 (hereinafter referred to as the 1993 Act). The same was subsequently amended twice, with the enactment of the Bihar Tax on Entry of Goods into Local Area For consumption, Use and Sale Therein (Amendment) Act, 2006 (Act No.19 of 2006) and the Bihar Tax on Entry of Goods into Local Area For consumption, Use and Sale Therein (Amendment and Validation) Act, 2007 (Bihar Act No.12 of 2007). Noticeably, the last amendment was with retrospective effect from 29th August 2006. Under that, the State of Bihar issued a Notification No.SO 95 dated 31.07.2008 enhancing rate of tax on the goods manufactured by the Petitioner. The incidence of tax stood enhanced from 5% to 16%. Resultantly, Petitioner laid a challenge to such action by way of CWJC No.5670 of 2009 titled as M/s VST Industries Limited v. the State of Bihar, wherein an interim order dated 04.05.2009 was passed directing payment of tax @ 12.5% till the disposal of the main Petition.



3. The State contends the Petitioner not to have complied with the said order. But in the present case, we are not concerned with such an issue.

4. During the pendency of the present Petition (s), yet another legislation, i.e., Bihar Settlement Taxation Disputes Act, 2019 (after this referred to as the Act) stood enacted. The purpose of this enactment is to provide an opportunity and mechanism for settlement of disputes arising out of or from the proceedings, inter-alia, the 1993 Act.

5. Section 2(d) of the Act defines what is an arrear; tax; penalty; interest or fine in dispute.

6. Section 2(f) defines what a dispute is and for ready reference, quoted as under:-

(f) "dispute" means case pending on 31st December, 2019 in respect of any period ending on or before 30th day of June, 2017 under the Law for which-

(i) a levy of tax, interest, fine or penalty by an authority appointed or prescribed or authorized under the Law or,

(ii) an assessment, re-assessment, scrutiny or any other order has been made; or

(iii) an appeal, revision, miscellaneous revision, review, reference, Writ Petition or Special Leave Petition has been filed; or

(iv) a revision or review proceeding has been initiated; or



(v) a notice or order has been issued intimating the applicant for payment of tax, interest, fine or penalty; or

(vi) a notice has been issued in any proceeding under the Law requiring payment of any tax, interest, fine or penalty; or

(vii) a proceeding for recovery of tax, interest, fine or penalty, initiated by or pending before any authority appointed or prescribed or authorised under the Law or the Bihar and Orissa Public Demand Recovery Act, 1914;

7. Section 2(g) defines what is a disputed amount, to mean any tax, interest, fine or penalty which is due to be paid by the “Party” as defined under Section 2(j) to mean a person who has applied under the Act for settlement of any dispute.

8. The procedure and the manner for settlement of disputes are laid down in Chapter II (Section-3) and Chapter III (Section 4 and 5) of the Act. In terms, the party wishing to settle the dispute is required to furnish with the Prescribed Authority an application in such form and manner, as may be prescribed. There is no dispute of such a mechanism being in place.

9. Section 5 of the Act postulates a duty on the Prescribed Authority to process and decide the application in a prescribed manner. In our considered view, the Act is complete, comprehensive, and self-serving. There is no ambiguity in the language that requires interpretation. The object is plain and simple. It is to settle arrears of tax of different nature, i.e., levy of tax,



interest, fine or penalty which may be levied or concerning which, inter-alia, appeal, revision, or a writ petition stands filed. However, the dispute must be concerning the period ending on or before 30th June 2017 and case filed before 31st December 2019.

10. The Act does not postulate any settlement subject to the outcome of any order/judgment passed by any judicial or quasi-judicial authority. It is complete and independent legislation with a specified object and purpose of settlement of disputes of different nature and categories.

11. It is not in dispute that under such statutory right, Petitioner, within the prescribed time, applied for the settlement of a dispute in Form-I. It is also not in dispute that specific queries were raised by the Prescribed Authority, which also was answered by the Petitioner vide detailed response annexed to the Petition (s). However, the Petitioner application stands rejected vide impugned order dated 25.06.2020.

12. To our mind, the order on the face of it is without any decipherable reasons and is cryptic. It doesn't even refer to or deal with anyone of the facts stated by the Petitioner. Certainly, the impugned order entails civil and pecuniary consequences. Unequivocally Petitioner has expressed its intent and desire to get the matter settled under the Act.



13. The Hon'ble Apex Court in Dharpal Satyapal Limited Versus Deputy Commissioner of Central Excise, Gauhati and Ors. [(2015) 8 SCC 519] has elaborately discussed and laid down different facets of principles of natural justice, including the requirement of passing a reasoned order. Of course, such principles need to be applied to attending facts and circumstances, which in the instant cases, we find to apply with equal force.

14. As already discussed, the Prescribed Authority does not assign any decipherable reason in rejecting the application. Hence, in our considered view, there is non-application of mind, much less consideration of material placed by the party in support of its claim for settlement under the Act.

15. We may observe that with intent to put an end to the entire litigation, spread over more one and a half decades, and Petitioner sought to exercise its right under Law, which, unfortunately, appears to have been scuttled by the Prescribed Authority without application of mind.

16. In the counter-affidavit State has tried to justify such action on the ground of its inability to issue any notice of demand, precluded by an interim order passed in M/s VST Industries Limited (supra). Is it open for the State to take even take such a ground? In our considered view, not so. We say this for reasons that: (a) the



ambit and scope of the Act are not to enforce any judgment or decree, much less any interim order passed by any Court. (b) It is to arrive at a settlement, dehors any litigation or dispute on the specified terms provided under Section 3; (c) neither the order of rejection nor the order asking the Petitioner to fill in deficiency refers to such fact. (d) Petitioners' non-compliance of a judicial order, interim or otherwise, cannot be gone into in these proceedings. (e) State never took any action of either informing the Court of non-compliance or violation of such interim order. Nor did it initiate any proceedings for recovery of the amount in terms thereof.

17. There is yet another reason to discard such a plea. The reasons for rejection cannot be supplanted by way of an affidavit, especially when they were neither in the mind of the Officer nor on record of proceedings.

18. As such, we quash the impugned order dated 24.06.2020, subject matter of the present petition, and direct the Prescribed Authority to decide the Petitioner's application afresh by assigning reasons.

19. Considering the bounds of limitation stipulated under the Act, we direct, as the instant facts and equity so demands, Petitioner to appear before the authority tomorrow, i.e. 14.07.2020



at 10:30 A.M. through the mode of Video Conferencing. A fresh order be passed strictly in accordance with Law, by assigning reasons.

20. All issues on parties' rights under the Act are left open.

21. Since the decision is required to be taken within a time-bound period, we direct matter be heard through the mode of Video Conferencing.

22. Shri Vikash Kumar, learned Standing Counsel, appearing for the respondents undertakes to communicate this order during the day.

23. Copy of this order uploaded on the Website of the Patna High Court shall be an authenticated copy.

24. Writ petitions stand allowed in the above terms.

(Sanjay Karol, CJ)

(S. Kumar, J)

sujit/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	13.07.2020
Transmission Date	

