

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 16360 of 2021

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United Breweries Limited a company registered under the provisions of the Companies Act, 1956 having its registered office at U.B. Towers, U.B. City No. 24, Vittal Mallya Road, Bangalore- 560001 and factory at Plot No. A1, Industrial Area, Kopakala, P.S.- Naubatpur, District- Patna through its Authorized Signatory Shri Ajay Kumar Singh, Male, aged about 56 years son of Late Sarbdeo Singh, resident of Shail Bhawan, R.M.S. Colony, Kankarbagh, P.S. Kankarbagh, District- Patna

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner-cum- Secretary, State Taxes, Bihar, Patna.
2. The Joint Commissioner, State Tax, Patliputra Circle, Patna.
3. The Assistant Commissioner, State Tax, Patliputra Circle, Patna.

... ... Respondent/s

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Bihar Tax On Entry Of Goods Act, 1993 – Section 8

Bihar Value Added Tax Act, 2005 – Section 33

Law laid down by Hon'ble Apex Court in ***Sahara India(Firm), Lucknow vs. Commissioner of Income Tax, Central – I & Anr.***;(2008) Xiv SCC 151 has been relied.

Held – The order passed by the authority is absolutely cryptic, unreasoned and not dealing with any of the issues raised by the petitioner. That apart, on what basis authority has found the petitioner liable to pay interest is not borne out from the bare reading of the order. The mind of the authority has to be reflected from the reasoning furnished, which we find in the instant case to be absolutely non-existent.

After quashing the order and demand notice dated 30.07.2021, the matter was remanded back to assessing authority to hear the matter in terms of conditions (a) to (o).

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... .. Respondent/s

Appearance :

For the Petitioner/s : Msr. Prachi Pallavi, Advocate
 For the Respondent/s : Mr. Vikash Kumar, SC-11

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 24-01-2022

Heard learned counsel for the parties.

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

“(i) Quashing the order and demand notice, both dated 30.07.2021 (Annexure-9 & 9/1, page-50-53)



passed by the Assistant Commissioner, Commercial Tax, Patliputra Circle, Patna under Section 8 of the Bihar Tax on Entry of Goods Act, 1993 read with Section 33 of the Bihar Value Added Tax Act, 2005, by which, on the basis of audit objection, an interest of Rs.28,95,728.00 on delayed payment of Entry Tax for the period 2015-16, has been imposed upon the petitioner;

(ii) To pass such other order (orders) as your Lordship may deem fit and proper in the facts and circumstance of the present case.”

In view of the law laid down by Hon’ble the Apex Court in **Sahara India (Firm), Lucknow vs. Commissioner of Income Tax, Central-I & Anr., (2008) XIV SCC 151**, we are inclined to allow the writ petition for we do not find the authority to have dealt with all the issues raised by the petitioner, material at that, more so when it entails both civil and penal consequences. The order passed by the authority is absolutely cryptic, unreasoned and not dealing with any one of the issues raised by the petitioner. That apart, on what basis authority has found the petitioner liable to pay interest is not borne out from the bare reading of the order. The mind of the authority has to be reflected from the reasoning furnished, which we find in the instant case to be absolutely non-existent. A sum of ₹28,95,728/- stands levied as interest upon the petitioner in terms of the impugned order.



Shri Vikash Kumar, learned Standing Counsel No. 11 has tried to justify the order on the basis of the material, not placed before the authority but before this Court and that too preceding to the events leading to passing of the impugned order.

Well, this is unacceptable in law for the authority has to consider the material placed before itself and the order cannot be justified on any other material.

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

(a) We quash and set aside the impugned order 30.07.2021 passed by the Assistant Commissioner, State Tax, Patliputra Circle, Patna, Respondent No. 3 (Annexure-9) and Notice of Demand under Section 25 and Section 39 of the Bihar Value Added Tax Act, 2005 [Notice Id: N120484903585447] dated 30.07.2021 (Annexure-9/1);

(b) We direct the petitioner to appear before the Assessing Authority i.e. Assistant Commissioner, State Tax, Patliputra Circle, Patna, Respondent No. 3 on 7th of February, 2022 at 10:30 A.M., if possible through digital mode;

(c) On that date, the Assessing Authority shall allow the parties to place on record fresh materials;

(d) The Assessing Authority shall decide the case on



merits after complying with the principles of natural justice;

(e) Opportunity of hearing shall be afforded to the parties;

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

(g) The Assessing Authority shall pass a reasoned and speaking order assigning reasons;

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

(i) The Assessing Authority shall decide the case on merits expeditiously, preferably within a period of two months from the date of appearance of the petitioner;

(j) The Assessing Authority shall supply a copy of the order to the parties;

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

(l) Equally, liberty reserved to the parties to take recourse to further remedies should the need so arise;

(m) 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;

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

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

The instant petition stands disposed of in the aforesaid
terms.

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

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

(Sanjay Karol, CJ)

(S. Kumar, J)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	27.01.2022
Transmission Date	

