IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4917 of 2021

M/s R.K. AGRI BIZ LLP A limited liability partnership firm having its registered office at Radha Krishna Niwas, Sikandarpur, Muzaffarpur through one of its members namely Alok Kumar Kedia Male aged about 48 years son of Raj Kumar Kedia resident of Radha Kirshna Niwas, Sikandarpur, Muzaffarpur.

... ... Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeal) Tirhut Division Muzaffarpur.
3. The Joint Commissioner of State Taxes East Circle, Muzaffarpur.
4. The Assistant Commissioner of State Taxes East Circle, Muzaffarpur.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Gautam Kumar Kejriwal, Advocate
		Mr. Alok Kumar Jha, Advocate
		Mr. Pawan Kumar Singh, 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 : 22-07-2021

Petitioner has prayed for the following relief(s):

"a) For issuance of a writ in the nature of certiorari for quashing of an appellate order dated 14.10.2020 passed by the respondent number 2 in appeal case number MZ/GST- 09/2018-19 whereby the appeal preferred by the petitioner against the order dated 17.12.2018 passed by the respondent No.3 has been rejected;

b) For issuance of a writ in the nature of certiorari for quashing of the order dated 17.12.2018 passed by the respondent No. 3 whereby the substantial part of claim of credit of entry tax claimed by the petitioner in terms of section 140 of the Bihar Goods and Services Tax Act 2017 (hereinafter referred to as the act for short) has been rejected;

c) For further issuance of writ in the nature of certiorari for quashing of the letter dated 11.01.2021 issued vide process number 72 by the respondent No. 3 under section 79 of the act whereby the cash credit account of the petitioner has been attached and the banker of the petitioner has been called upon to remit a sum of ₹ 9,604,960/- on account of the petitioner to the State taxes Department in light of the order dated 17.12.2018 having been affirmed in appeal by the respondent number 2 vide impugned order dated 14.10.2020;

d) For further restraining the respondents from making recovery of the amount of credit of entry tax claim by the petitioner in light of the order dated 17.12.2018 passed by the respondent No. 3;

e) For further holding and a declaration that the claim of credit of entry tax made by the petitioner by way of a declaration filed in form TRAN 1 under section

140 of the act is well within the legal parameters prescribed under section 140(1) of the act and there is no applicability of section 140(3) of the act;

f) For further holding and a declaration that the class of dealers and goods Incorporated under section 140(3) of the act is totally different to that prescribed under section 140(1) of the act and section 140(3) deals with a particular situation with a particular class of dealers and the availability of benefit of transitional credit to them in terms of section 140 of the act;

g) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of the case."

It is brought to our notice that vide impugned order dated 14th of October, 2020 passed by the Respondent No. 2 namely the Additional Commissioner of State Taxes (Appeal), Tirhut Division, Muzaffarpur, in Appeal Case No. MZ/GST-09/2018-19, the appeal of the petitioner against the order dated 17.12.2018 passed by the Respondent No.3 The Joint Commissioner of State Taxes, East Circle, Muzaffarpur in GSTIN 10AALFR5190D1ZG, under Section 73 of GST Act, 2017 has been rejected and vide letter dated 11.01.2021 issued under process No.72 by respondent No.3 under Section 79 of the Act, the cash credit account of the petitioner has been attached.

Learned counsel for the Revenue, states that he has no objection if the matter is remanded to the Assessing Authority for deciding the case afresh. Also, the case shall be decided on merits. Also, during pendency of the case, no coercive steps shall be taken against the petitioner.

Statement accepted and taken on record.

However, having heard learned counsel for the parties as also perused the record made available, we are of the considered view that this Court, notwithstanding the statutory remedy, is not precluded from interfering where, *ex facie*, we form an opinion that the order is bad in law. This we say so, for two reasons- (a) violation of principles of natural justice, i.e. Fair opportunity of hearing. No sufficient time was afforded to the petitioner to represent his case; (b) order passed *ex parte* in nature, does not assign any sufficient reasons even decipherable from the record, as to how the officer could determine the amount due and payable by the assessee. The order, *ex parte* in nature, passed in violation of the principles of natural justice, entails civil consequences. As such, on this short ground alone, we dispose of the present writ petition in the following mutually agreeable terms:

(a) We quash and set aside the impugned order dated 14th of October, 2020 passed by the Respondent No. 2 namely the Additional Commissioner of State Taxes (Appeal), Tirhut

Division, Muzaffarpur, in Appeal Case No. MZ/GST-09/2018-19, the order dated 17.12.2018 passed by the Respondent No.3 The Joint Commissioner of State Taxes, East Circle, Muzaffarpur in GSTIN 10AALFR5190D1ZG, under Section 73 of GST Act, 2017 and letter dated 11.01.2021 issued under process No.72 by respondent No.3 under Section 79 of the Act;

(b) We accept the statement of the petitioner that ten per cent of the total amount, being condition prerequisite for hearing of the appeal, already stands deposited. If that were so, well and good. However, if the amount is not deposited for whatever reason(s), same shall be done before the next date;

(c) Further the petitioner undertakes to additionally deposit ten per cent of the amount of the demand raised before the Assessing Officer. This shall be done within four weeks.

(d) This deposit shall be without prejudice to the respective rights and contention of the parties and subject to the order passed by the Assessing Officer. 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;

(e) 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.

(f) Petitioner undertakes to appear before the Assessing Authority on 22nd of September, 2021 at 10:30 A.M., if possible through digital mode;

(g) The Assessing Authority shall decide the case on merits after complying with the principles of natural justice;

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

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

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

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

(l) 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;

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

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

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

(p) 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;

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

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

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.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	29.07.2021
Transmission Date	