IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6487 of 2021

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M/s Satyendra Kumar and Company Construction Pvt. Ltd. Having its registered office at G-7, Ground Floor, Tara Tower, Behind Hotal Republic, Exhibition Road, Patna through its Director and authorized representative Prashant Kumar, Male Aged About 32 Years S/o Sunil Kumar R/o Flat No. -C-401, Dev Kutir Apartment, Jagat Narayan Road, Kadamkuan, P.O. and P.S- Kadamkuan, Dist.- Patna.

... ... Petitioner/s

Versus

1. The Union of India Through the Secretary, Department of Revenue, Ministry of Finance, New Delhi.
2. The Secretary Department of Revenue, Ministry of Finance, Government of India, New Delhi.
3. The Central Board of Indirect Taxes and Customs Department of Revenue, Ministry of Finance, Government of India, New Delhi.
4. The State of Bihar Through the Commissioner-cum- Secretary, Commercial Taxes, Govt. of Bihar, Patna.
5. The Commissioner of State Tax Vikash Bhawan, Patna.
6. The Additional Commissioner State Taxes (Appeal) Patna Eastern Division, Patna.
7. The Joint Commissioner of State Tax Patna North, Patna.
8. The Joint Commissioner of State Patna East, Patna.
9. The Chief Commissioner of Central Taxes 3rd Floor, Central Revenue (Annex) Building, Birchand Patel Path, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Brisketu Sharan Pandey, Advocate
		Mr. Abhishek Kumar, Advocate
For the Respondent/s	:	Mr.Dr. K. N. Singh (ASG)
		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)

(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 : 24-06-2021

Petitioner has prayed for the following relief(s):

a. For issuing writ/writs, order/orders including the writ of certiorari for quashing the order dated 29.12.2020 bearing Memo No.243 issued by the Additional Commissioner of State Taxes (Appeal), Patna Eastern Division, Patna and consequent FORM APL 02 dated 31.12.2020 whereby and whereunder the appeal preferred by the petitioner against the order dated 21.03.2020 issued by Joint Commissioner State Taxes (Eastern Circle), Patna, has been rejected on the ground of limitation

b. For issuing writ of certiorari for quashing the Summary of Order (demand order issued in FORM GST DRC 07) dated 08.03 2020 issued for the tax period January 2019 to March 2019 wherein a demand of tax, interest and penalty has been levied against the Petitioner.

c. For issuing writ/writs, order/ orders including the writ of certiorari for quashing the order dated 21.03 2020 issued for the tax period January 2019 to March 2019 wherein a demand of tax of Rs. 28,81,675.00, interest of Rs.4,88,814/- and penalty of Rs. 3,27,878- totalling to Rs. 36,98,367- for CGST, SGST as well as IGST has been levied against the Petitioner.

d. For issuing writ/writs, order/orders including the wit of mandamus after remanding the case back to the assessing authority and directing him/ her to assess the liability of the Petitioner afresh after considering the submissions and merits of the case.

e. For reading down section 16 (4) of the CGST/BGST Act in a manner which this Court deems fit in order to enable the petitioner to claim his rightful input tax credit given the fact that the petitioner has fled its GST returns under section 39 of the act within the time period as extended due to COVID 19 pandemic.

f. For holding that the petitioner who failed to file return claiming Input Tax Credit for the period January 2019 to March 2019 within the prescribed period of Section 16 of GST Act cannot be deprived of its genuine claim to avail Input on the purchase made by it during the aforesaid period specially when the time limit to file the return were extended by the Respondents only.

g. For holding that the Respondent No. 3 erred in rejecting the appeal fled by the Petitioner only on the grounds of limitation during COVID 19 pandemic given the fact that during the aforesaid pandemic period Central Government has issued Notification No 35/ 2020 dated 03.04 2020, Notification No. 55/ 2020 dated 27.06 2020 Notification No.65/2020 dated 01.092020 Notification No.91/2020 dated 14.12. 2020 have granted extension in the time limit for completion/compliance under the GST Act.

h. For holding that the rejection of appeal fled by the petitioner solely on the ground of delay as also on the ground of non submission of hard copy of appeal in absolute ignorance to fact that there have been series of notifications granting extension to the time frame required for compliance/completion within the GST Act condoning all the instances of delay occurred during COVID 19 period.

i. For issuing appropriate notification to Respondent No.1 to 3 to issue appropriate notification and thereby creating provision for extension in availment of Input Tax Credit u/s 16 of GST Act as and when extension is granted for filing of GST Returns-GSTR-1 and GSTR-3B.

j. For holding that the imposition of liability of tax, interest and penalty on Petitioner by the Respondent is illegal and void.

k. For holding that the Respondents cannot impose any liability of interest as well as tax on the Petitioner when there has been no loss of revenue to the state.

l. For directing the Respondents not to take any coercive action against the Petitioner until the Pendency of the proceedings.

m. To pass any other order/orders which it may deem fit in the facts and circumstances of the case and within the ends of equity, justice and good conscience."

It is brought to our notice that post passing of the impugned order 21st of March, 2020 passed by Respondent No. 7 namely The Joint Commissioner of State Tax, Patna North, Patna in GSTIN 10AANC57160B1ZP, under Section 73(9) of GST Act, 2017, petitioner's bank account(s) also stands attached. Also, post passing of the impugned order dated 21st of March, 2020, and summary of order in Form GST DRC-07 dated 8th of March, 2020 passed by Respondent No. 7 namely The Joint Commissioner of State Tax, Patna North, Patna in Reference No. ZA1003200117982, petitioner preferred an appeal bearing Appeal Case No. T.S.T./P.T.N.-06/2020-21, which was rejected vide order 29th of December, 2020 by Respondent No. 6, namely The Additional Commissioner of State Taxes (Appeal), Patna Eastern Division, Patna, only on the ground of delay. Thereafter, the subsequent appeal in FORM APL 02 also stood rejected vide order dated 31st of December, 2020 passed in Reference No. ZD1012200303578.

Learned counsel for the Revenue vehemently opposed the prayer made on behalf of the petitioner.

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 of assessment 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 21st of March, 2020 passed by Respondent No. 7 namely The Joint Commissioner of State Tax, Patna North, Patna in GSTIN 10AANC57160B1ZP, under Section 73(9) of GST Act, 2017; and summary of order in Form GST DRC-07 dated 8th of March, 2020 passed by Respondent No. 7 namely The Joint Commissioner of State Tax, Patna North, Patna in Reference No. ZA1003200117982; the appellate order dated order 29th of December, 2020 passed by Respondent No. 6, namely The Additional Commissioner of State Taxes (Appeal), Patna Eastern Division, Patna, in Appeal Case No. T.S.T./P.T.N.-06/2020-21 as also the subsequent appellate order dated 31st of December, 2020 passed in Reference No. ZD1012200303578 [FORM APL 02];

(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;

(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) In this view of the matter, 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 Officer on 9th of August, 2021 at 10:30 A.M., if possible through digital mode;

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

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

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

(j) The Assessing Officer shall decide the matter on merits expeditiously, preferably within a period of two months from the date of appearance of the petitioner;

(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 such other remedies as are otherwise available in accordance with law;

(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;

(p) All other prayers are left open to be adjudicated if the petitioner so desires, in an appropriate proceedings;

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	07.07.2021
Transmission Date	