

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8285 of 2021

Associated Power Structures Pvt. Ltd., through its Authorised Signatory Mr. Manish Arvindbhai Thakkar, R/O- 25-245, Pitambar Pole, Near Post Officer, Fatepura, Vadodara- 390006, Gujarat.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Commissioner of State Tax, Bihar, Patna.
3. The Assistant Commissioner of State Tax, (Patliputra), Pant Bhawan, Bailey Road, Patna, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Aryan Sinha, Advocate Dr. Avinash Poddar, Advocate Mr. Puneet Siddhartha, Advocate Mr. Ravi Kumar, Advocate
For the Respondent/s	:	Mr. Vivek Prasad, G.P.-7

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

Date : 08-07-2021

Petitioner has prayed for the following relief(s):

“1(A) A writ in the nature of Certiorari or any other appropriate writ/s, order/s direction/s, quashing the following:

(i) Show cause Notice along with Summary of Show cause notice in FORM GST DRC-01 dated 14.02.2021 issued by respondent no.3 for the period April 2020 to September 2020 against the procedure as prescribed in Rule 142 of the Central Goods and Service Tax Rules 2017 (hereinafter referred as “CGST Rules, 2017”) and Bihar Goods and Service Tax Rules, 2017 (hereinafter referred as “BGST Rules, 2017”).



(ii) Summary of order in FORM GST DRC-07 dated 23.02.2021, issued by respondent no. 3 for the period April 2020 to September 2020 without issuing the order under section 73(9) of the CGST Act, 2017 and further in violation of the principles of natural justice.

(B) A writ in the nature of mandamus or any other appropriate writ/s, order/s direction/s for the following reliefs:

(i) Directions to respondents to stay the proceedings initiated by the respondent no.3 and further restrain respondents from resorting to any coercive measure against the Petitioner.

(C) To any other relief/s to which the petitioners are found entitled to.”

“(iii) Rectification order dated 12.04.2021 along with summary of rectification order in FORM GST DRC-08 dated 12.04.2021 issued by respondent no.3 in violation of principles of natural justice.”

Shri Vivek Prasad, learned Government Pleader No. 7, under instructions fairly states that the authority below i.e. Respondent No. 3 namely the Assistant Commissioner of State Tax, (Patliputra), Pant Bhawan, Bailey Road, Patna, Bihar committed mistake in passing the impugned order dated 14th of February, 2021 in Form GST DRC-01 vide Reference No. ZD100221009928T and summary of the order dated 23.02.2021 in Form GST DRC-07 vide Reference No. ZD1002210127753 as



also the rectification order dated 12th of April, 2021 in Reference No. ZD100421001280L (Annexure-12) and summary of Rectification/Withdrawal Order dated 12th of April, 2021 (Annexure-13).

Well, the stand taken by the officer is quite fair, but we only fail to understand as to why the officer did not apply his mind at the time of passing of the impugned order. It is only when this Court pointed out the difference, wide enough for anyone to notice in imposing the amount of penalty, did the officer realizing his mistake, agreed to rectify the same. We only caution the officer to be careful in future and not commit such mistake again, for such type of mistake not only causes harassment to the parties but also shatters faith of the people in the system. Illustratively, as against the original demand of Rs. 11 crores, the officer while reviewing his own order reduced it to 18 lacs and in another case from 8 crores to 2.8 crores.

Under similar circumstances, in C.W.J.C. No. 25256 of 2019, titled as **Pinax Steel Industries Pvt. Ltd. Vs. The State of Bihar & Anr.**, we had quashed the order of assessment passed by the Assessing Officer.

As such, as prayed for by the State, we dispose of the present writ petition in the following mutually agreeable terms:-



(a) We quash the impugned order dated 14th of February, 2021 in Form GST DRC-01 vide Reference No. ZD100221009928T, summary of the order dated 23.02.2021 in Form GST DRC-07 vide Reference No. ZD1002210127753 passed by Respondent No. 3 namely the Assistant Commissioner of State Tax, (Patliputra), Pant Bhawan, Bailey Road, Patna, Bihar, as also the rectification order dated 12th of April, 2021 in Reference No. ZD100421001280L (Annexure-12) and summary of Rectification/Withdrawal Order dated 12th of April, 2021 (Annexure-13) with a direction to the Assessing Officer to pass a fresh order in terms of the provisions of the Central Goods and Services Tax Rules 2017 as also the Bihar Goods and Service Tax Rules 2017.

(b) Petitioner undertakes to appear before the Assessing Authority on 9th of August, 2021 at 10:30 A.M., if possible through digital mode;

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

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

(e) During pendency of the case, no coercive steps



shall be taken against the petitioner.

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

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

(h) 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;

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

(j) 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;

(k) 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.

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



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

(n) 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;

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

(p) 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	16.07.2021
Transmission Date	

