IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 7901 of 2021

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M/s Meera Traders, a proprietorship firm having it's place of business at Nirmali, Supaul, Bihar through it's proprietor namely Abhishek Kumar Nayak, male, aged about 34 years son of Umesh Prasad Nayak, Resident of Ward No. 06, Thana Road, Nirmali, Supaul. ....Petitioner

Versus

1. **The Union of India** through the Secretary, Ministry of Finance, Government of India at New Delhi.
2. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna.
3. The Assistant Commissioner of State Taxes, Supaul [With Purnea].

…………… Respondents

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate Mr. Alok Kumar Jha, Advocate
For the Respondent/s	:	Dr. K.N. Singh, ASG Mr. Anshuman Singh, Sr. S.C., CGST & CX Mr. Vikash Kumar, S.C. 11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

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(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 : 07-06-2021

Learned counsel for the parties desire the matter be taken up today.

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

a) For holding and a declaration that the provision of law incorporated under section 16(4) of the Central Goods And Services Tax Act 2017 (hereinafter referred to as the central act for short) as well as Bihar Goods And Services Tax Act 2017 (hereinafter referred to as the state act for short) is ultra vires the provisions of article 265 of the Constitution of India;

b) For issuance of a consequential writ in the nature of a declaration striking down the provision of law incorporated under section 16(4) of both the central and state act;

c) For further holding and a declaration that the provision of law prescribed under section 16 (4) of both the central and state act violates and defeats the very concept of indirect taxation which is the foundation of both the laws;

d) For further holding and a declaration that the provision of law prescribed under section 16 (4) of both the central and state act has a direct consequence of subjecting the taxable person under the said central and state act to direct taxation which in other words is a tax charged on the income of a person and as such is a complete departure from the very spirit, theme and object of both the laws legislated by the Parliament and the competent legislatures;

e) For further holding and a declaration that the provision of law incorporated under section 16 (4) of both the central and state act creates a situation of double taxation of one particular transaction which is impermissible in terms of the provisions of both the central and state act as double taxation has not been specifically prescribed anywhere under both the legislations;

f) For further holding and a declaration that in absence of any restriction upon filing of returns for any part of the preceding financial year even after the month of September of the following financial year under the provisions of both the central and state act the denial of input tax credit in terms of section 16 (4) of both the acts is ultra vires the meaning and purpose arising out of conjoined reading of section 39 read with section 47 read with section 49 (2) of the central act;

Or In The Alternative;

g) For holding and a declaration that the provision of law incorporated under section 16 (4) of both the central and state act is simply directory and not mandatory and as such any inadvertent failure or non-compliance of the requirements of the said provision would not defeat the entitlement of a person to input tax credit contemplated under the acts;

h) For holding and a declaration that the input tax credit being a substantial right arising out of beneficial part of legislation under both the central and state act cannot be snatched for the sake of mere procedural cobweb as prescribed under section 16 (4) of both the acts;

i) For holding and a declaration that the very nature of input tax credit as substantive right cannot permit its extinction at the hands of procedural requirements which is always directory in nature and not mandatory;

j) For further holding and a declaration that the language and tenor in which section 16 (4) has been couched would impart the said provision the character of mere procedural law directory in nature and not that mandatory;

k) For further holding and a declaration that the presentation of return by the person defined under the provisions of both the central and state act is mere declaration of the version of such person as regards the taxable transactions carried out in a particular tax period and therefore the substantive right in the shape of input tax credit of such person which has its connection with the payment of input tax reaches the state exchequer through the supplier cannot be defeated for reasons of delay in such declaration made in terms of the provisions of section 16 (4) and therefore the said provision if at all has to remain part of both the central and state act has to be deemed directory in nature;

l) For issuance of a writ in the nature of certiorari for quashing of the show cause notice issued by the respondent number 3 vide reference number ZA100220008731J and ZA100220008750J dated 09.02.2020 in form GST DRC – 01 under section 73 (1) of both the central and the state act;

m) For further issuance of a writ in the nature of certiorari for quashing of orders issued by the respondent number 3 vide reference number ZA100320012256J and ZA100320012230J both dated 08.03.2020 and summary of order issued in form DRC - 07 bearing ref. no. ZA100320012256J and ZA100320012230X under section 73 of the state act;

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

During the course of submission, petitioner confined his relief with respect to prayer clause 'l' and 'm', reserving liberty to press the other prayers, on the same and subsequent cause of action, if so required, in an appropriate proceedings.

It is brought to our notice that post passing of the impugned order dated 8th of March, 2020, petitioner's bank account(s) also stands attached.

According to the Revenue, petitioner has an equally alternative efficacious remedy of filing an appeal under the provisions of the Bihar Goods and Services Tax Act, 2017.

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 8th of March, 2020 passed by Respondent No. 3, namely the Assistant Commissioner of State Taxes, Supaul [With Purnea] vide Reference Nos. ZA100320012256J and ZA100320012230J and summary of order issued in form DRC-07 bearing ref. no. ZA100320012256J and ZA100320012230X under Section 73 of the State Act;

(b) We accept the statement of the petitioner that 10 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 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 21st of July, 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)

Sujit/PKP-

AFR/NAFR	
CAV DATE	
Uploading Date	09.06.2021
Transmission Date	