IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8061 of 2021

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Associated Power Structures Pvt. Ltd. Through its Authorised Signatory Mr. Manish Arvindbhai Thakkar aged about - 46 years, Male, Son of Arvindbhai Thakkar, Resident of - 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

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Appearance :
For the Petitioner/s : Mr.Ravi Kumar, Advocate
For the State : Mr. Pawan Kumar, AC to learned AG

For the Union of India : Dr. K.N.Singh, A.S.G.
Mr. Anshuman Singh, Sr. S.C., CGST & CX

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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 : 30-06-2021

Our attention is invited to the Circular dated 11th of August, 2020, issued by the Government of India, Ministry of Finance, Department of Revenue (State Taxes-I Section), and Circular dated 27th of October, 2020, issued by the

Government of India, Ministry of Finance, Department of Revenue (Central Board of Indirect taxes & Customs) Legal Cell, copy whereof is taken on record.

In view of the same, Union of India be impleaded as Party Respondent No. 4.

Registry to make necessary correction, both on the digital as also the hard file.

Dr. K.N. Singh, learned Additional Solicitor General and Shri Anshuman Singh, Sr. S.C., CGST & CX enter appearance on behalf of the newly added respondents.

Petitioner has prayed for the following relief(s):

> (A) A writ in the nature of Certiorari or any other appropriate writ/s, order/s direction/s quashing the following;
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> (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 2018 to March 2019 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")
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> (ii) Summary of order in FORM GST DRC-07 dated 23.02.2021, issued by respondent no.3 for the period April 2018 to March 2019 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:
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> (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."

The instant petition has been filed for quashing of show cause notice dated 14.02.2021 issued by respondent no.3 namely the Assistant Commissioner of State Tax, (Patliputra) Patna and the summary of order dated 23.02.2021 issued in form GST DRC-07.

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 notice dated 08.02.2020 and also order/notice dated 08.03.2020, passed by Respondent No.3 namely the Assistant Commissioner of State Tax, Gopalganj, Division, Gopalganj (Annexure-3) in Reference No. ZA100320013660L and notice dated 08.03.2020 issued under Section 79(1)(c) of the Goods and Services Tax Act, 2007, under form DRC-13;

(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 9th of August, 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) Liberty reserved to the petitioner to challenge the order, if required and desired;

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

(o) 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;

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

(q) 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)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	07.07.2021
Transmission Date	