IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8027 of 2021

Amar Chandani Son of Hira Lal Resident of Diwana Takiya, Post - Lalbagh, Bela, District- Darbhanga.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-cum-Commissioner, Department of Commercial Taxes, Government of Bihar, Patna.
2. The Joint Commissioner, State Taxes, Darbhanga Circle, Darbhanga, Bihar.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Mrigank Mauli, Advocate
For the Respondent/s	:	Mr.Vikash Kumar, SC-11
For the Respondent/s	:	Mr. Vivek Prasad, GP-7
For the Union of India	:	Dr. K.N.Singh, Addl. S.G.
		Mr. Anshuman Singh, Sr. S.C., CGST & CX

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 : 30-06-2021

Petitioner has prayed for the following relief(s):

a) For issuance of writ in the nature of Certiorari, quashing the order dated 04/03/2020 passed under section 73(9) of the Bihar Goods and Service Tax Act (hereinafter referred as "BGST Act")/Central Goods and Service Tax Act (hereinafter referred as "CGST Act") and r/w Rule 142(5) of the Central Goos and Service Tax Rules, by Joint Commissioner State Taxes, Darbhanga Circle, Darbhanga and consequent demand order issued for the tax period Nov, 2018 to March 2019, in FORM GST DRC 07 dated 04/03/2020 wherein a demand of Rs.49,83,047/- (Tax = Rs. 43,92,617/-, Interest =Rs.1,51,168/-, Penalty =Rs.4,39,261/-), on the ground that petitioner has claimed the Input Tax Credit (hereinafter referred as "ITC") beyond due date i.e.,, 20/10/2019 ignoring the extension given by the Ministry of Finance, Government of India vide order No. 08/2019- Central Tax, dated 14/11/2019 & Notification No 41/2020-Central Tax dated 05/05/2020 for filing the return and claiming ITC.

b) For issuance of writ in the nature of Certiorari, quashing the order dated 10/02/2020 passed under section 73 of the BGST Act/CGST Act by Joint Commissioner State Taxes, Darbhanga Circle, Darbhanga and consequent order issued for the tax period Nov, 2018 to March 2019, in FORM GST DRC 01 dated 11/02/2020, wherein a demand of Rs. 49,83,047/- (Tax= Rs.43,92,617), Interest=Rs.1,51,168/-, Penalty= Rs.4,39,261/-) on the ground that petitioner has claimed the ITC beyond due date i.e., 20/10/2019-ignoring the extension given by the Ministry of Finance, Government of India vide order No. 08/2019-Central Tax, dated 14/11/2019 & Notification No. 41/2020-Central Tax, dated 05/05/2020 for filing the return and claiming ITC.

c) For holding and declaring that the period for claiming the ITC for the period 2018-19 should have been extended till the extended period of filling of annual return.

d)For holding and declaring that the action of the respondent assessing authority is not responding and communicating to the petitioner anything about the petition dated 25.02.2020 submitted by the petitioner in form DRC-06 seeking further time tin the proceeding and passing of the aforesaid impugned order along with the demand notice without fixing of date hearing and eecsion is denial of rights to adequate opportunity of hearing and therefore violates the principles of natural justice;

e)For further holding and a declaration that in the undisputed facts and circumstances of this case the petitioner is entitled to an opportunity of submitting its case and also of hearing on the issues of facts and law before any fresh decision is taken by the respondent assessing authority in terms of the provisions of the act.

f) For issuance of writ in the nature of mandamus directing and commanding upon the respondent authorities not to take any coercive action including attachment of bank account of petitioner, during the pendency of the writ petition.

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

The instant petition has been filed for quashing of the order dated 04.03.2020 passed by the Respondent No. 2, the Joint

Commissioner State Taxes, Darbhanga Circle, Darbhanga and consequent demand order issued dated 04.03.2020 as well as the order dated 10.02.2020 passed by the Respondent No. 2, the Joint Commissioner State Taxes, Darbhanga Circle, Darbhanga.

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 04.03.2020 passed by the Respondent No. 2, the Joint Commissioner State Taxes, Darbhanga Circle, Darbhanga and consequent demand order issued dated 04.03.2020 as well as the order dated 10.02.2020 passed by the Respondent No. 2, the Joint Commissioner State Taxes, Darbhanga Circle, Darbhanga.

(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	