IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9064 of 2021

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Shree Baidyanath Automobiles, a proprietary concern having its office at Gandhi Nagar, Ghorashan, through its Proprietor, Abhya Kumar (Male) (aged about 36 years) son of Shri Baidyanath Singh, resident of Balapur, Chainpur, Kundwa, East Champaran, P.S. Ghorasahan, Bihar.

... ... Petitioner/s

Versus

1. Union of India through the Secretary Union of India through the Secretary, Ministry of Finance, Department of Revenue, North Block New Delhi 110001.
2. State of Bihar through the Commissioner of State Tax, having its office at Vikas Bhawan, Bailey Road, Patna.
3. Principal Chief Commissioner of CGST and Central Excise having its office at Central Revenue Building, (Annexe), Bir Chand Patel Marg, Patna.
4. Principal Commissioner Patna 1, CGST and Central Excise, having its office at Central Revenue Building, (Annexe), Bir Chand Patel Marg, Patna.
5. Addl. Commissioner of State Tax (Appeal), Tirhut Division, Muzaffarpur.
6. Asst. Commissioner of State Tax, Raxaul, Tirhut, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D.V.Pathy, Advocate
For the U.O.I.	:	Mr. Dr. K. N. Singh (ASG)
For the State	:	Mr. Ajay Kumar Rastogi, AAG-9

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

Date : 09-07-2021

Petitioner has prayed for the following relief(s):

> "1. (i) for a declaration that section 16(4) of the Central Goods and Services Tax Act, 2017 (hereinafter called the CGST Act) and section 16(4) of the Bihar Goods and Services Tax Act, 2017 (hereinafter called the BGST Act) denying entitlement of input tax credit in respect of any invoice or debit note for supply of goods or services

or both after the due date of furnishing of the return under section 39 for the month of September following the end of the financial year to which such invoice or debit note pertains of the relevant annual return in violative of Article 14 and 300A of the Constitution of Indian.

(ii) for a declaration section 16(4) of the CGST and BGST Act to the extent it seeks to deny input tax credit if not taken within the due date of furnishing of the return for the month of September following the end of the financial year to which any invoice or debit note pertains or furnishing of annual return, whichever is earlier is arbitrary and illegal.

(iii) for a declaration that the conditions as prescribed in section 16(4) of the CGST and BGST Act are merely procedural in nature and cannot override the substantive conditions as mandated in section 16(1) and section 16(2) of the said Acts.

(iv) for a declaration that that in view of the non obstante clause present in section 16(2) of the CGST and BGST Act the same would prevail over section 16(4) of the said Acts.

(v) for a declaration that that on true interpretation of section 16(4) of the CGST and BGST Act the embargo in the said provision would apply only to restrict claim of input tax credit in respect of invoices or debit notes received after the end of the financial year beyond September of the preceding financial year and not such claims in a belated return filed after such date.

(vi) for a declaration that that GSTR-3B cannot be said to be a return prescribed under section

39(1) of the CGST Act, 2017 as it does not satisfy the parameters of a return contemplated under section 39(1) of the said Act.

(vii) for a declaration that Rule 61 (5) of the CGST Rules, 2017 as amended retrospectively prescribing Form GSTR-3B as a return under section 39(1) of the CGST Act itself.

(viii) the show cause notice dated 13.02.2020 (as contained in Annexure-2 series and 3) issued by the respondent no. 6 under section 73 of the BGST Act proposing to disallow input tax credit for the tax period March 2019 on the solitary ground of late filing of return in Form GSTR 3B be quashed.

(ix) the order dated 13.03.2020 (as contained in Annexure-4 series) passed by the respondent no.6 disallowing input tax credit fr the tax period March 2019 on the solitary ground of late filing of return in Form GSTR 3B be quashed.

(x) in the alternative and without prejudice to the prayer made in (i) above read down section 16(4) of the CGST and BGST Act to remove the embargo f claim of input tax credit in the circumstances stated in section 16(4) of the said Act.

(xi) the notice of demand dated 13.03.2020 (as contained in Annexure-4 series) issued by the respondent no.6 for the tax period March 2019 be quashed.

(xii) the order dated 22.01.2021 (as contained in Annexure-6) passed by the respondent no.5 dismissing the appeal be quashed.

(xiii) the notice of demand dated 21.01.2021 in Form DRC-13 (as contained in Annexure-11) attaching the bank account of the petitioner for recovery of the disputed demand of tax raised only upon disallowance of input tax credit under section 16(4) of the CGST and BGST Act be quashed.

(xiv) for granting any other relief(s) to which the petitioner is otherwise found entitled to."

It is brought to our notice that vide impugned order dated 22.01.2021 (Annexure-5) passed by the Respondent No. 5, namely Additional Commissioner, of State Tax (Appeal), Tirhut Division, Muzaffarpur in Appeal No. AD1001210053090, the appeal of the petitioner against the order dated 13.03.2020 (Annexure-4) passed by the Respondent No. 6 namely Assistant Commissioner of State Tax, Raxaul, Tirhut, Bihar, in Reference No. ZA100220017270Q has been rejected.

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 22.01.2021 (Annexure-5) passed by the Respondent No. 5, namely Additional Commissioner, of State Tax (Appeal), Tirhut Division, Muzaffarpur in Appeal No. AD1001210053090, as also the order dated 13.03.2020 (Annexure-4) passed by the Respondent No.

6 namely Assistant Commissioner of State Tax, Raxaul, Tirhut, Bihar, in Reference No. ZA100220017270Q;

(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 16th 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) The Assessing Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

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

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

(p) 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;

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

(r) 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)

PKP/Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	