IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 9364 of 2021

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M/s Future through its Sole Proprietor Mr. Rajesh Kumar aged about 44 years, S/o Satya Narayan Prasad, having it principle office at Chhoti Kalyani Road, near Syndicate Bank, P.S. Bramhpura, District- Muzaffarpur.

...................Petitioner

Versus

1. The Union of India, through the Secretary, Ministry of Finance, Department of Revenue, having its office at Room No. 46, North Block, P.O. and P.S. North Block, New Delhi- 110001.
2. The Central Board of Indirect Taxes and Customs, through its Chairman, Ministry of Finance, Department of Revenue, having its office at North Block, P.O. and P.S. North Block, New Delhi-110001.
3. The Commissioner of Central Goods and Services Tax & Central Excise, Patna having its office at New Secretariat Patna Bihar.
4. Joint Commissioner of State Tax, West Circle, District- Muzaffarur, Bihar.
5. Assistant Commissioner of State Tax, West Circle, District- Muzaffarpur.
6. Additional Commissioner, Office of State Tax Additional Commissioner (Appeal), Tirhut Division, Muzaffarpur.

.... RESPONDENTS

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Appearance :

For the Petitioner/s	:	Mr. Anurag Saurav, Advocate
		Mr. Abhinav Alok, Advocate
		Mr. Priyajeet Pandey, Advocate
For the Respondent/s	:	Dr. K.N. Singh, ASG
		Mr. Ajay Kumar Rastogi, AAG-10
		Mr. Shashi Shekhar Tiwari, A.C. to AAG-10

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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

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

(i) For Issuance of an appropriate writ/ order/ direction for declaring Section 16(4) of the Bihar/ Central Goods and Services Tax Act, 2017 as ultra virus, in as much as it seeks to impose a time limit for the availment of Input Tax Credit being violative of Article 14, Article 19(1)(g) and Article 300A of the Constitution of India and also being violative of the basic structure of the Bihar/ Central Goods and Services Tax Act, 2017.

(ii) For issuance of an appropriate writ/ order/ direction for declaring the amendment carried under Rule 61(5) of the Bihar/ Central Goods and Services Rules, 2017 inserted vide Clause 4(a) of Notification No. 49/2019 dated 9th October, 2019 issued by Respondent no.2

Central Board of Indirect Taxes and Customs as ultra vires, under which GSTR-3B has been declared to be a valid return under Section 39 of the Central Goods and services Act, 2017 with retrospective effect from 01.07.2017, as being wholly violative of Article 14, Article 19(1)(g) and Article 300A of the Constitution of India as it has an effect of interfering with the vested right of the petitioner to avail Input Tax Credit.

(iii) For issuance of an appropriate writ/or/direction for quashing /setting aside the order dated Order dated 18.02.2020 and DRC-07 dated: 06.03.2020 issued by the Respondent no.5 to the petitioner, under which the petitioner has been intimated for disallowance of Input Tax Credit and further imposing of tax (including penalty and interest) of an amount of Rs. 11,55,757/- under CGST and an amount of Rs. 11,55,757/- under SGST and vide order the amount so available in the Input Tax Credit ledger or the electronic credit ledger of the petitioner were stopped forthwith for discharge of any liability under Section 49 of the CGST / BGST Act, 2017 or claim of refund of any unutilized amount, as being contrary to the provisions of Rule 86(A) of the Central Goods and Services Rules Tax, 2017, as well as being arbitrary, unreasonable and against the scheme of the Central / Bihar Goods and Services Tax Act, 2017 read with the prescribed rules under Central/ Bihar Goods and Services Tax Rules, 2017, as the petitioner has rightly availed the Input Tax Credit from its electronic credit ledger;

(iv) For setting aside order dated 22.01.2021 passed in Appeal Case No. AD100320003079Z by State Tax Additional Commissioner (Appeal), Tirhut Division, Muzaffarpur whereby and where under the appellate authority had rejected the claim of the petitioner and upheld the order passed by Assessing Officer with regard to rejection of the Input Tax Credit set off for the financial year 2018-19.

(v) For issuance of an appropriate Writ(s), order(S), and/or direction(s), as Your Lordships may deem fit and proper in the facts and circumstances of this case in the interest of justice.

It is brought to our notice that vide impugned order dated 22nd of January, 2021, passed by Respondent No. 6 namely Additional Commissioner, Office of State Tax Additional Commissioner (Appeal), Tirhut Division, Muzaffarpur, in Appeal Case No. AD100320003079Z, (Annexure-10), appeal preferred by the petitioner against the order dated 18th of February, 2020 (Annexure-3) passed by the Respondent No. 5 namely The Assistant Commissioner of State Tax, West Circle, District- Muzaffarpur in GSTIN 10AMZPK2555P1ZF and Summary of order dated 6th of March, 2020 in Form GST

DRC-07, stands dismissed. The orders appear to be *ex parte* in nature.

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, 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 22nd of January, 2021, passed by Respondent No. 6 namely Additional Commissioner, Office of State Tax Additional Commissioner (Appeal), Tirhut Division, Muzaffarpur, in Appeal Case No. AD100320003079Z, (Annexure-10); order dated 18th of February, 2020 (Annexure-3) passed by the Respondent No. 5 namely The Assistant Commissioner of State Tax, West Circle, District-Muzaffarpur in GSTIN 10AMZPK2555P1ZF and Summary of order dated 6th of March, 2020 in Form GST DRC-07;

(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. 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) In this view of the matter, 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 Officer on 9th of August, 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;

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	07.07.2021
Transmission Date	