IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9837 of 2021

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M/s Amba Tirupati Zetetic Engineering Private Limited having its place of business at Flat No. 401, 4th Floor, Pawan Pradeep Apartment, Khetan Gali, West Boring Canal Road, Patna through one of its directors namely Amrita Jha female aged about 52 years wife of Late Anil Jha resident of Flat No. 401, 4th Floor, Pawan Pradeep Apartment, Khetan Gali, West Boring Canal Road.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Government of India at New Delhi.
2. The Principal Chief Commissioner of Central GST and CX, Central Revenue Building, Birchand Patel Path, Patna.
3. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
4. The Assistant Commissioner of State Taxes, Patliputra Circle, Patna. (March-2019)
5. The Additional Commissioner of State Taxes (Appeals), Patna Central Division, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Gautam Kumar Kejriwal

For the Respondent/s : Mr.Dr. K.N. Singh (ASG)

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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 : 09-07-2021

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 under 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 the state act;

c) For holding and a declaration that the entitlement to the benefit of input tax credit is subject to fulfillment of the conditions prescribed under section 16 (2) alone and it cannot be subjected to further riders of eligibility conditions in terms of section 16 (4) of both the said acts;

d) 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;

e) 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;

f) 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;

g) 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;

h) 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;

i) 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 procedures as prescribed under section 16 (4) of both the acts;

j) 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;

k) For issuance of a consequential writ or order for quashing of the order dated 12.03.2020 passed under section 73 of the state act and also for quashing of the summary of order issued in form GST DRC - 07 dated 13.03.2020 issued by the respondent no. 4 U/s 73(9) of the State Act whereby and where under the input tax credit claimed by the petitioner qua the taxable period of March 2019 has been rejected and denied for reasons of delay in filing of the respective returns in terms of section 16 (4) of both the acts;

l) For further issuance of a writ in the nature of certiorari for quashing of the order dt. 05.02.2021 issued vide memo no. 95 and also for quashing of the communication of such rejection

served upon the petitioner in form GST APL – 02 dt. 05.02.2021 which is solely on technical grounds of delay; 16/131

m) For further issuance of a direction or order restraining the respondent number 4 from taking any coercive action for recovery of the amount in demand from the petitioner during the pendency of the present writ application or for a direction for refund of the part or whole of the amount in case recovered from the petitioner in exercise of powers under the provisions of both the central and Bihar act during the pendency of the writ application;

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

It is brought to our notice that vide impugned order dated 05.02.2021 (Annexure-6), passed by respondent no.5, the Additional Commissioner of State Taxes (Appeals), Patna Central Division, Patna in Appeal Case No. AD100221000608Z, the appeal of the petitioner against the order dated the order dated 13.03.2020, (Annexure-4) passed by the Respondent No. 4 namely the Assistant Commissioner of State Taxes, Patliptra Circle, Patna in Reference No. ZA100320016492F has been rejected merely on the grounds of being barred by limitation.

In our considered view, the delay stands sufficiently explained on account of COVID restrictions.

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 05.02.2021 (Annexure-6), passed by respondent no.5, the Additional Commissioner of State Taxes (Appeals), Patna Central Division, Patna in Appeal Case No. AD100221000608Z, as also the order dated the order dated 13.03.2020, (Annexure-4) passed by the

Respondent No. 4 namely the Assistant Commissioner of State Taxes, Patliptra Circle, Patna in Reference No. ZA100320016492F;

(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 17th 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	