IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10775 of 2021

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M/s Laxmi Enterprises Lawkariya Harnatad, West Champaran through its Proprietor Brajmohan Khatait, aged about 60 years, Male, Son of Brahmdev Khatait, Resident of Ward No. 4, Lawkariya Harnatat, District- West Champaran.

... ... Petitioner/s

Versus

1. The Union of India through the Principal Chief Commissioner of Goods and Services Tax, Government of India, New Delhi.
2. The Principal Commissioner of Central Tax, Government of India, New Delhi.
3. The Commissioner Central Tax, Government of India, New Delhi.
4. The State of Bihar through the Principal Chief Commissioner, State Tax, Bihar, Patna.
5. The Chief Commissioner State Tax, Goods and Services, Bihar, Patna.
6. The Commercial Taxes Officer, Bagha Circle, Bagha, District- West Champaran.
7. The Joint Commissioner, State Taxes, Bagha Circle, Bagha, District West Champaran.
8. The Assistant Commissioner of State Tax Bagha Circle, Bagha.
9. The Joint Commissioner State Taxes, Bagha Circle, Bagha.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Kundan Kumar, Advocate
		Mr. Santosh Kumar, Advocate
		Mr. Ranjeet Kumar, Advocate
For the Respondent/s	:	Mr.Dr. K.N. Singh, ASG
		Mr. Anshuman Singh, Sr. SC, CGST & CX
For the State	:	Mr. Vivek Prasad, GP-7

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

Date : 22-07-2021

Petitioner has prayed for the following relief(s):

"i. For setting aside the Order No.6 dated 19.06.2019, passed by the Joint Commissioner State Taxes, Bagha Circle, Bagha whereby the Input Tax

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> Credit (ITC) claimed by the petitioner for Rs.5,57,738.59/- under the provision of TRAN-1 was rejected and tax, interest and penalty for Rs.8,58,917.43/- was ordered to be payable by the petitioner and it was also directed to issue DRC 07 for Rs.8,58,917.43/-.
> ii. the petitioner further prays for setting aside the demand notice i.e., DRC 07 dated 19.06.2019, issued by the Assistant Commissioner of State Tax, Bagha Circle, Bagha for Rs. 8,58,917.43/-.
> iii. The petitioner further prays that after setting aside the order no.6 dated 19.06.2019 and DRC 07 dated 19.06.2019, the Input Tax Credit claimed by the petitioner for Rs. 5,57,738.59/- be allowed and the respondent authorities be directed to give the said amount of ITC with interest.
> iv. For any other relief for which the petitioner may be deemed entitled to."

Petitioner has prayed for quashing of Order No. 6 dated 19.06.2019 issued by the Respondent No. 7 namely the Joint Commissioner of State Taxes, Bagaha Circle, Bagaha in GSTIN -10BWGPK9193R1ZT as also the summary of order dated 19.06.2019 in Reference No. ZA100619000528T in Form GST DRC-07, which is *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, 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.

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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 Order No. 6 dated 19.06.2019 passed by the Respondent No. 7 namely the Joint Commissioner of State Taxes, Bagaha Circle, Bagaha in GSTIN -10BWGPK9193R1ZT as also the summary of order dated 19.06.2019 in Reference No. ZA100619000528T in Form GST DRC-07;

(b) We accept the statement of the petitioner that ten per cent of the total amount, being condition prerequisite for

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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 3rd September, 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;

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(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;

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(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)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

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