

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 9961 of 2021

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Broad Son Commodities Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at Dr. Himanshu Complex, Block Road, Koilwar Chouk, P .S. Koilwar, District Bhojpur (Ara), through its Director Ashok Kumar aged about 65 years (male), son of Ram Chandra Saw, resident of Village/Mohalla - Pareo, P.S. Bihta, District Patna

..... Petitioner.

Versus

1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Government of Bihar.
2. The Principal Secretary cum Commissioner, State Tax, Commercial Taxes Department, Government of Bihar.
3. The Additional Commissioner (Appeal), State Tax, Patna West Division, Patna.
4. The Joint Commissioner of State Tax, Shahabad Circle, Ara.

..... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Suraj Samdarshi, Advocate Mr. Piyush Ranjan, Advocate Mr. Rajan Prakash, Advocate Mr. Vijay Shankar Tiwari, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, S.C. 11

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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) To issue an appropriate writ, order or direction in the nature of *certforari* for quashing order contained in memo no 246 dated 18.03.2021 passed by Respondent Additional Commissioner (Appeal), State Tax in Case no. GST / SH - 48 / 20-21 whereby the well-founded appeal of the petitioner



against the adjudication order dated 30.01.2021 contained in Reference no. ZD1001210267923 passed by the Respondent Joint Commissioner of State Tax under section 73 of the CGST /SGST Act 2017 directing the petitioner to deposit Tax of Rs. 9,69,25, 768/- Interest of 1, 74,46,638/- and penalty of Rs. 96,92,576/- (Total Rs. 12,40,64,982/-) has been rejected on wholly erroneous grounds and without considering the case of the petitioner.

ii) To issue an appropriate writ, order or direction in the nature of *certiorari* for quashing the order dated 30.01.2021 contained in Reference no. ZD100121026 7923 passed by the Respondent Joint Commissioner of State Tax under section 73 of the CGST /SGST Act 2017 directing the petitioner to deposit Tax of Rs. 9,69,25, 768/- Interest of 1, 74,46,638/- and penalty of Rs. 96, 92,576/- (Total Rs. 12,40,64, 982/-).

iii) To issue an appropriate writ, order or direction in the nature of *certiorari* for quashing the show cause contained in Reference no ZD1012200084756 dated 10.12.2020 issued by the Respondent Joint Commissioner of State Tax under section 73 alleging short payment of tax under reserve charge mechanism on the royalty paid to the government.

iv) To issue an appropriate writ, order or direction in the nature of *certiorari* for quashing letter no. 877 dated 20.03.2021 addressed to the Manager HDFC Bank Patliputra Colony Patna, letter no. 800 dated 20.03.2021 addressed to the Manager, Punjab National Bank, Dehri on Sone, Rohtas and letter no. 801 dated 20.03.2021 addressed to the Manager Punjab National Bank, Bhojpur, all written by the Respondent no. 4 under section 79(1)(c) of the Central Goods and Services Tax 2017 directing them to make payment of Rs. 57,01,20,094/on behalf of the petitioner.

v) During the pendency of this writ application the Respondents may be directed not to take any coercive steps against the petitioner for recovery of the disputed tax amount.

vi) This Hon'ble Court may further adjudicate and hold that



the services provided by the State of Bihar to the petitioner by way of grant of mineral concession for winning sand is not leviable with GST in light of the specific exemption granted by Sl no. 64 of notification no 12/2017 dated 28.06.2017.

vii) This Hon'ble Court may further adjudicate and hold that the show cause dated 10.12.2020, the adjudication order dated 30.01.2021 and the appellate order contained in memo no. 246 dated 18.03.2021 having been issued without any DIN are in contravention of circular no 122 / 41 / 2019 / GST dated 05/ 11 /2019 and are therefore bad in law.

viii) This Hon'ble Court may further adjudicate and hold that even if GST is leviable on the royalty paid by the petitioner to the state of Bihar, then the advance ruling dated 29.09.2020 classifying the same under residual entry of sl. no 17 of Notification no 11 /2017, is binding on the department.

ix) This Hon'ble Court may further adjudicate and hold that the show cause dated 10.12.2020, adjudication order dated 30.01.2021 and the appellate order dated 18.03.2021 classifying the services under Sl no. 29 Heading 9991 of Notification no 11 /2017 is bad in law as the same is contrary to the advance ruling dated 29.09.2020 classifying the same under residual entry of sl no 17 of Notification no 11 /2017.

x) This Hon'ble Court may further adjudicate and hold that the adjudication order is bad in law inasmuch as no reasons have been given for confirming the disputed tax and also that the petitioner has not been granted adequate opportunity to present its case.

xi) This Hon'ble Court may further adjudicate and hold that the order of appellate authority dated 18.03.2021 is bad in law inasmuch as the same has been passed in a mechanical manner without any application of mind and without dealing with the grounds raised by the petitioner.

xii) To grant any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case.”



It is brought to our notice that vide impugned order 18th of March, 2021 passed by Respondent No. 3 namely The Additional Commissioner (Appeal), State Tax, Patna West Division, Patna in Appeal Case No. GST/SH-48/20-21 (Annexure-9), appeal preferred by the petitioner against the order dated 30th of January, 2021 passed by the Respondent No. 4 namely The Joint Commissioner of State Tax, Shahabad Circle, Ara vide Reference No. ZD1001210267923 and Summary of order dated 30th of January, 2021, stands dismissed. Both the orders were *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 18th of March, 2021 passed by Respondent No. 3 namely The Additional Commissioner (Appeal), State Tax, Patna West Division, Patna in Appeal Case No. GST/SH-48/20-21 (Annexure-9); the order dated 30th of January, 2021 passed by the Respondent No. 4 namely The Joint Commissioner of State Tax, Shahabad Circle, Ara vide Reference No. ZD1001210267923 and Summary of order dated 30th of January, 2021;

(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 within a period of



seven days from the date of account being made operational;

(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 a period of seven days from the date of account being made operational.

(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 stands 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	06.07.2021
Transmission Date	

