IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10237 of 2021

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M/s G.P. Hardware through Sole Propreitor Shahnshah Mubarak, aged about 28 years approximately, male, son of Ashfak Alam, resident of Farsadenga, Naya Tola, Fakirtoli, P.o.- Asja Mobaiya via Baisi, P.s.- Amour, District- Purnia

... ... Petitioner/s

Versus

1. The Union of India through Secretary, Ministry of Finance, Government of India, New Delhi
2. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna
3. The Additional Commissioner (Appeals) State Goods and Service Tax, Purnia, Bihar
4. The Joint Commissioner of State Taxes, Purnia Circle, Purnia, Bihar
5. The Deputy Commissioner of State Taxes, Purnia Circle, Purnia, Bihar

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sriram Krishna, Advocagte
		Mr. Amrisha Srivastava, Advocate
		Mrs. Prakritita Sharma, Advocate
		Mr. Abhijeet Gautam, Adv.
For the State	:	Mr. Vikash Kumar, SC-11
For CGST & CX	:	Dr. K. N. Singh (ASG)
		Mr. Anshuman Singh, Sr. S.C. CGST & CX

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

Date : 08-07-2021

Our attention is invited to the Circular dated 11th of August, 2020, issued by the Government of India, Ministry of Finance, Department of Revenue (State Taxes-I Section), and Circular dated 27th of October, 2020, issued by the Government of India, Ministry of Finance, Department of Revenue (Central Board of Indirect taxes & Customs) Legal

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Cell, copy whereof is taken on record.

In view of the same, Union of India be impleaded as Party Respondent No. 4.

Registry to make necessary correction, both on the digital as also the hard file.

Dr. K.N. Singh, learned Additional Solicitor General and Shri Anshuman Singh, Sr. S.C., CGST & CX enter appearance on behalf of the newly added respondents.

Petitioner has prayed for the following relief(s):

> (a) For issuance of an appropriate writ(s), direction(s) or order(s) setting aside the appellate order dated 09.01.2021 passed by the Additional Commissioner (Appeals) State Goods and Services Tax, Purnia, Bihar contained in Memo No. 308 dated 11.01.2021 whereby the Respondent No. 3 herein has rejected the petitioner's Appeal No. (ARN) AD1005200002182 and in turn has upheld the order dated 25.02.2020 passed by the respondent no. 4 herein;
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> (b) For issuance of an appropriate writ(s), direction(s) or order(s) setting aside the order dated 25.02.2020 passed by the Joint Commissioner, State Goods and Services Tax, Purnia, Bihar (respondent no. 4 herein) and the consequent order dated 25.02.2020 issued under section 73 of the Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as the BGST Act') passed by the Deputy Commissioner, State

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Goods and Services Tax, Purnia, Bihar (respondent no. 5 herein) and granting an opportunity of hearing before the adjudicating authority in consonance with the principles of natural justice;

(c) For reading down section 16(4) of the BGST Act to the extent that it restricts the petitioner from availing Input Tax Credit hereinafter referred to as 'the ITC') for the months of September and October 2018 and for issuance of an appropriate writ(s), direction(s) or order(s) to the respondent authorities to take into account the ITC amounting to Rs. 22,29,011 each under CGST Credit and SGST Credit for Financial Year 2017-18 for the moths of September and October 2018 which was available to the petitioner herein while calculating the total ITC available to the petitioner for the Financial Year 2018-19 because the lTC available to the petitioner stands reflected in Forms GSTR-3B, GSTR-9C and GSTR-2A for Financial Year 2017-18, however the same was not taken into account for reasons best known to the respondents;

(d) For issuance of an appropriate writ(s), direction(s) or order(s) to the respondent authorities to grant an opportunity of hearing to the petitioner so that the petitioner can explain the missing ITC that remained unutilized but was available to it for Financial Year 2017-18 under both the heads i.e., CGST and SGST can also be taken into account while computing the total ITC available to the petitioner for Financial Year 2018-19 because the adjudicating officer i.e., respondent no. 4 herein passed the order of assessment on 25.02.2020 even before the petitioner could file its reply to Show Cause Notice dated

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24.01.2020 issued under section 73 of the BGST Act in Form GST DRC-01; and

(e) For issuance of any other appropriate writ(s), direction(s) or order(s) as this Hon'ble Court may deem fit on the facts and in the circumstances of the case.

It is brought to our notice that vide impugned order dated 09.01.2021 (Annexure-P11) passed by the Additional Commissioner (Appeals) State Goods and Services Tax, Purnia, Bihar in Appeal No. (ARN) AD1005200002182, the appeal of the petitioner against the order dated 25.02.2020 (Annexure-P8) passed by respondent no.4, the Joint Commissioner of State Taxes, Purnia Circle, Purnia, Bihar has been rejected.

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

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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 09.01.2021 (Annexure-P11) passed by the Additional Commissioner (Appeals) State Goods and Services Tax, Purnia, Bihar in Appeal No. (ARN) AD1005200002182, as also the order dated 25.02.2020 (Annexure-P8) passed by respondent no.4, the Joint

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Commissioner of State Taxes, Purnia Circle, Purnia, Bihar;

(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.

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(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

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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

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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	

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