IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11025 of 2021

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M/s CEAT Limited, A Company incorporated under the Companies Act 1956/2013 Having office at Besides NRL Petrol Pump, NH 30 Ashu Chak, Transport Nagar, Patna, Bihar - 800026 Through its Authorized Representative Ram Krishna Chauhan (M) Aged about 37 years S/o Prithvi Raj Chauhan R/o House No. 467, Railway Gole Market, P.O. and P.S.- Balidih, Radhanagar, District - Bokaro, Jharkhand.

... ... Petitioner/s

Versus

1. The Union of India Through the Secretary Department of Revenue, Ministry of Finance, North Block, New Delhi - 110001.
2. The Secretary Department of Revenue, Ministry of Finance, North Block, New Delhi - 110001.
3. The State of Bihar through the Secretary-Cum-Commissioner-Commercial Taxes, Govt. of Bihar, Vikas Bhawan, Patna.
4. The Secretary-Cum-Commissioner-Commercial Taxes, Govt. of Bihar, Vikas Bhawan, Patna.
5. The Additional Commissioner State Tax (Appeals), Central Division, Patna.
6. The Assistant Commissioner, State Taxes, Patliputra Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Brisketu Sharan Pandey, Advocate Mr. Bharat Raichandani, Advocate Mr. Abhishek Kumar, Advocate
For the State	:	Mr. Vivek Prasad, G.P.-7
For the U.O.I.	:	Mr. 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

Petitioner has prayed for the following relief(s):

"1. (a) For issuing appropriate writ including writ of Certiorari or any other writ, order or direction calling for the records pertaining to the Petitioner case and after going into the Validity and legality thereof quash and set aside impugned order dated 23.02.2021 issued by the Assistant Commissioner, State Taxes, Patliputra Circle, Patna (Respondent No.6) in relation to Year 2018-19 (Annexure P/1) whereby and whereunder a demand order in form of DRC-07 for demand worth Rs. 28,29,694 (Rs. 22,93,101 as CGST/GST/IGST cumulatively and Rs 5,36,583 as interest thereupon) has been issued;

(b) For issuing writ of Certiorari or any other appropriate writ, order or direction after going into the validity and legality thereof direct the Respondent No. 6 to decide afresh the matter filed by the Petitioner by following the principles of natural justice;

(c) That this Hon'ble Court be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction ordering and directing the Respondent No. 6 by himself, his subordinates, servants and agents, pending disposal of the present petition not to recover demand confirmed vide impugned order dated 23.02.2021 issued by Respondent No. 6 (Annexure P/1) and stay the execution and other proceedings thereof;

(d) For Granting interim and ad-interim reliefs in terms of prayer (a), (b) & (c) above;

(e) For awarding costs of this petition;

(f) For such and other reliefs as the nature and circumstances of the case may require."

We find the impugned order to have been passed pursuant to the issuance of show-cause notice, as envisaged under Rule 100(2) of the Central Goods and Services Tax Rules, 2017. Even though the petitioner was noticed, but the order stands passed prior to the expiry of the statutory period envisaged under the said rule.

Notice to show cause was issued on 14th of February, 2021 and as per the rules petitioner was entitled to respond to the same, in writing, within 15 days, which he did vide response dated 24th of February, 2021, but, however, prior thereto, the authority passed the impugned order dated 23rd of February, 2021.

As such, there is clear infraction of not only the rules but also principles of natural justice, inasmuch as, the petitioner’s contention, as submitted in the written reply was not considered, thus seriously prejudicing its case. The imposition of tax/ penalty does entail civil consequences.

As such, on this limited ground of infraction of the rules as also the violation of principles of natural justice, we dispose of the present writ petition in the following mutually agreeable terms:-

(a) We quash and set aside the impugned order in Form GST DRC-07 dated 23rd of February, 2021 passed by the Respondent No. 6 namely the Assistant Commissioner, State Taxes, Patliputra Circle, Patna, in Reference No. ZD100221012878V (Annexure-P/1) as also the notice in Form GST DRC-01 dated 14th of February, 2021 in Reference No. ZD100221009992Y;

(b) The matter is remanded back to the Assessing Officer i.e. the Assistant Commissioner, State Taxes, Patliputra Circle, Patna;

(c) Petitioner undertakes to appear before the Assessing Authority on 9th of August, 2021 at 10:30 A.M., if possible through digital mode;

(d) The Assessing Authority shall decide the case on merits after complying with the principles of natural justice;

(e) The Assessing Authority shall pass a fresh order on the basis of reply filed by the petitioner;

(f) Opportunity of hearing shall be afforded to the parties as also to place on record all essential documents and materials, if so required and desired, within one week from the date of appearance;

(g) During pendency of the case, no coercive steps shall be taken against the petitioner.

(h) The Assessing Authority 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 Authority shall decide the case on merits expeditiously, preferably within a period of two months from the date of appearance of the petitioner;

(k) The Assessing Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

(l) Liberty reserved to the petitioner to challenge the order, if required and desired;

(m) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(n) 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;

(o) We have not expressed any opinion on merits and all issues are left open;

(p) 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)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	16.07.2021
Transmission Date	