IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11280 of 2021

==

M/a 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 (Male) 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

==

Appearance :

For the Petitioner/s : Mr.Brisketu Sharan Pandey

For the Union of India : Dr. K.N.Singh, Addl. S.G.

Mr. Anshuman Singh, Sr. S.C., CGST & CX

==

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):

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 tax period April, 2020 to Sept 2020 (Annexure P/1) whereby and whereunder a demand order in form of DRC-07 for demand worth Rs 2,36,774 (Rs 2,25,284/- as CGST/GST/IGST cumulatively and Rs 11,490/- 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. For issuing 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 issuing any writ, order or direction more particularly in the nature of a Writ of Declaration to declare Rule 36 (4) of Central Goods and Service Tax rules 2017 as null, void and ultra vires of Section 16 and Section 42 of Central Goods and Service Tax Act 2017 and thereof quash and set aside impugned order dated 23.02.2021 "(Annexure P/1)" and show cause notice 28.12.2020 "(Annexure P/3)";

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

f. For awarding costs of this Petition;

g. For such and other reliefs as the nature and

The instant petition has been filed for for quashing of the show cause notice dated 28.12.2020 (AnnexureP/3) and order dated 23.02.2021 passed by the Respondent No.6 namely Assistant Commissioner, State Taxes, Patliputra Circle, Patna (Annexure P/1) whereunder a demand order in form DRC-07 has been issued.

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 how cause notice dated 28.12.2020 (AnnexureP/3) and order dated 23.02.2021 passed by the Respondent No.6 namely Assistant Commissioner, State Taxes, Patliputra Circle, Patna (Annexure P/1)**;**

(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 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 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)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	14.07.2021
Transmission Date	