IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12067 of 2021

M/s IOTAS Solutions Pvt. Ltd. a company registered under the provisions of the Companies Act, 2013, having its registered office at C/o Bhagwan Das Ray, Kathpul, South Mandiri, Patna, through its one of its Directors, namely, Manish Kumar, aged about 31 years, Male, son of Shri Bhagwan Das Ray, Resident of South Mandiri, near Kathpul Durga Temple, P.S.-Budha Colony, Distt.-Patna.

... ... Petitioner/s

Versus

1. The Union of India through the 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 Deputy Commissioner of State Taxes, Patna Special Circle, Patna.
4. The Assistant Commissioner of State Taxes, Patna Special Circle, Patna.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mohit Agarwal, Advocate
		Ms. Priya Gupta, Advocate
For the Respondent/s	:	Mr.Dr. K.N. Singh (ASG)
		Mr. Pawan Kumar, AC to AG

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

(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 : 16-07-2021

Petitioner has prayed for the following relief(s):

a) For a declaration that Section 16(4) of the Central Goods & Services Tax Act 2017 (hereinafter referred to as the central Act for short) as well as Bihar Goods & Services Tax Act 2017 (hereinafter referred to as the state Act for short) is ultra vires to the Article 265 of the Constitution of India;

b) For a declaration that the provision of law prescribed under Section 16 (4) of both the central and state Act violates and defeats the very concept of indirect taxation which is the foundation of both the laws;

c) For further holding and a declaration that the provision of law prescribed under Section 16 (4) of both the central and state Act have a direct consequence of subjecting the taxable person under the said central and state Act to direct taxation which in other words is a tax charged on the income of a person and as such is a complete departure from the very spirit, theme and object of both the laws legislated by the Parliament and the competent legislatures;

d) For further holding and a declaration that the provision of law incorporated under Section 16 (4) of both the central and state Act creates a situation of double taxation of one particular transaction which is impermissible in terms of the provisions of both the central and state Act as double taxation has not been specifically prescribed anywhere under both the legislations;

e) For further holding and a declaration that in absence of any restriction upon filing of returns for any part of the preceding financial year even after the month of September of the following financial year under the provisions of both the central and state Act the denial of input tax credit in terms of Section 16 (4) of both the Acts is ultra vires the meaning and purpose arising out of conjoined reading of Section 39 read with Section 47 read with Section 49 (2) of the central Act;

f) In alternative for a declaration that the provision of law incorporated under Section 16 (4) of both the central and state Act has two parts one substantive with regard to grant of input tax credit i.e. set of with the tax paid at the earlier transaction and the procedural part of making claim of the input tax credit within certain prescribed time and therefore, the procedural part is directory and cannot defeat the substantive entitlement of input tax credit if it is shown that the Tax has been paid in the preceding transaction of sale or purchase and grant of consequential relief;

g) For consequential quashing of the order dated 05.03.2020 passed under Section 73 (9) of the Bihar GST Act, 2017 and the demand Notice issued in Form DRC 07 raising a demand to the tune of Rs. 13,41,176.84/- as the same is passed in violation of the Principles of Natural Justice;

h) For quashing of the impugned Appellate order dated 30.01.2021 passe in Appeal Case no. AD10012100642B on the ground of limitation without considering the circular of the CBDT passed during Pandemic COVID-19 any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case.

It is brought to our notice that vide impugned order dated 30th of January, 2021, passed by the Deputy Commissioner of State Taxes, Patna Special Circle, Patna in Appeal Case No. AD10012100642B, the appeal of the petitioner against the order dated 05.03.2020, passed by the

Assistant Commissioner of State Taxes, Patna Special Circle, Patna has been rejected merely on the grounds of being barred by limitation. The order is *ex parte* in nature.

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 Appellate Authority for deciding the appeal afresh. Also, while considering and deciding the appeal, the ground of delay shall not be taken into account and the appeal shall be decided on merits. Also, during pendency of the appeal, no coercive steps shall be taken against the petitioner.

Statement accepted and taken on record.

Shri Mathur, learned counsel for the petitioner, submits that the entire amount, subject-matter of the order impugned before the Appellate Authority, stands deposited/recovered and, as such, the condition of pre-deposit for hearing the appeal stands complied with.

Statement accepted and taken on record.

Having heard learned counsel for the parties as also perused the record made available, we dispose of the present petition in the following mutually agreeable terms:-

(a) We quash and set aside the impugned order dated 30th of January, 2021, passed by the Deputy Commissioner of State Taxes, Patna Special Circle, Patna in Appeal Case No. AD10012100642B and appeal is restored to its original number and position.

(b) We accept the statement of the petitioner that entire amount, subject-matter of the order impugned before the Appellate Authority, stands deposited/recovered and, as such, the condition of pre-deposit for hearing the appeal stands complied with. If that were so, the appeal shall be decided on merits. However, if the amount is not deposited for whatever reason(s), same shall be done before the next date;

(c) This deposit shall be without prejudice to the respective rights and contention of the parties and subject to the order passed by the Appellate Authority. 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;

(d) 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.

(e) Petitioner undertakes to appear before the Appellate Authority on 16th of September, 2021 at 10:30 A.M., if possible through digital mode;

(f) The Appellate Authority shall condone the delay in filing the appeal and decide the appeal on merits after complying with the principles of natural justice;

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

(i) The Appellate Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(j) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(k) The Appellate Authority shall decide the appeal on merits expeditiously, preferably within a period of two months by a speaking order from the date of appearance of the petitioner;

(l) Liberty reserved to the petitioner to challenge the vires of Section 16(4) of G.S.T. Act and Rule 61(5) of the G.S.T. Rules by way of separate proceedings;

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

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

(o) 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;

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

(q) 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)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	23.07.2021
Transmission Date	