

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12233 of 2021

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M/s National Enterprises through its Partner Mr. Sanjeev Kumar Barman, aged about 42 years, S/o Binod Barman, having its Principle office at B.M.P.-6, Malighat, Ramana, Mithanpura, Bihar.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue, having its office at Room No. 46, North Block, P.O. and P.S. North Block, New Delhi- 110001.
2. The Central Board of Indirect Taxes and Customs, through its Chairman, Ministry of Finance, Department of Revenue, having its office at North Block, P.O. and P.S. North Block, New Delhi- 110001.
3. The Commissioner of Central Goods and Services Tax and Central Excise, Patna having its office at New Secretariat, Patna, Bihar.
4. Joint Commissioner of State Tax, Muzaffarpur, Tirhut Division, District- Muzaffarpur, Bihar.
5. Assistant Commissioner of State Tax, Muzaffarpur East, Tirhut Division, District- Muzaffarpur.
6. Additional Commissioner, Office of State Tax Additional Commissioner, Tirhut Division, District- Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anurag Saurav, Advocate
For the Respondent/s	:	Mr. Dr. K. N. Singh (ASG)
		Mr. Pawan Kumar, AC to AG

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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 : 30-07-2021

Petitioner has prayed for the following relief(s):

“ (I) For issuance of an appropriate writ/ order/ direction



for declaring Section 16(4) of the Bihar/Central Goods and Services Tax Act, 2017 as ultra virus, in as much as it seeks to impose a time limit for the availment of Input Tax Credit being violative of Article 14, Article 19(1)(g) and Article 300A of the Constitution of India and also being violative of the basic structure of the Bihar/Central Goods and Services Tax Act, 2017.

- (ii) For issuance of an appropriate writ/ order/ direction for declaring the amendment carried under Rule 61(5) of the Bihar/Central Goods and Services Tax Rules, 2017 inserted vide Clause 4(a) of Notification No. 49/2019 dated 9th October, 2019 issued by Respondent No. 2 Central Board of Indirect Taxes and Customs as ultra vires, under which GSTR-3B has been declared to be a valid return under Section 39 of the Bihar/Central Goods and Services Tax Act, 2017 with retrospective effect from 01.07.2017, as being wholly violative of Article 14, Article 19(1)(g) and Article 300A of the Constitution of India as it has an effect of interfering with the vested right of the petitioner to avail Input Tax Credit.
- (iii) For issuance of an appropriate writ/or/direction for quashing/ setting aside the order dated Order dated 15.02.2020 and DRC-07 dated: 07.03.2020 issued by the Respondent no.5 to the petitioner, under which the petitioner has been intimated for disallowance of Input Tax Credit and further imposing of tax (including penalty and interest) of an amount of Rs. 11,01,707/- under CGTST and SGST and vide order the amount so available in the Input Tax Credit ledger or the electronic credit ledger of the petitioner



were stopped forthwith for discharge of any liability under Section 49 of the CGTST/ BGST Act, 2017 or claim of refund of any unutilized amount, as being contrary to the provisions of Rule 86(A) of the Central/Bihar Goods and Services Tax Act, 2017 read with the prescribed rules under Central/ Bihar Goods and Services Tax Rules, 2017, as the petitioner has rightly availed the Input Tax Credit from its electronic credit ledger:

- (iv) For restraining the respondent authorities to initiate recovery proceeding in pursuance to the order dated 15.02.2020 passed by Respondent no.3 in the pendency of the present writ application.
- (v) For issuance of an appropriate Writ(s), order(S), and/or direction(s), as Your Lordships may deem fit and proper in the facts and circumstances of this case in the interest of justice.”

It is brought to our notice that vide impugned order dated 15.02.2020 passed by the Respondent No. 5 namely the Assistant Commissioner of State Tax, Muzaffarpur East, Tirhut Division, District- Muzaffarpur, passed in SCN No. ZA1002200197738 (GSTIN 10AA1FN5585H1Z8), under Section 73(9) of GST Act, 2017 for the tax period 2017-18 and order dated 07.03.2020 in Form GST DRC-07, the petitioner has been intimated for disallowance of Input Tax Credit and further imposing of tax (including penalty and interest) of an amount of Rs.11,01,707/-.

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 impugned order dated 15.02.2020 passed by the Respondent No. 5 namely the



Assistant Commissioner of State Tax, Muzaffarpur East, Tirhut Division, District- Muzaffarpur, passed in SCN No. ZA1002200197738 (GSTIN 10AA1FN5585H1Z8), under Section 73(9) of GST Act, 2017 for the tax period 2017-18 and order dated 07.03.2020 in Form GST DRC-07;

(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 29th of September, 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;

(s) 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;

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)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	04.08.2021
Transmission Date	

