

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12664 of 2021

M/s Sober Agencies a proprietary concern having its place of business at Ground Floor, Shop No. 11, Kuldeep Sahay Tower, Exhibition Road, Dist-Patna, through its proprietor namely, Manoj Kumar Verma, aged about 50 years, Male, son of Shri K.P. Verma, Resident of Sharada Ashirwad, House No. 1059, Gokul Path, Near Gaya Singh Khatal, North Patel Nagar, Kesari Nagar, P.S.-Sashtri Nagar, Dist-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 Central Circle, Patna.
4. The Assistant Commissioner of State Taxes, Patna Central Circle, Patna.
5. The Branch Manager, IDBI Bank, Virendra Smtiri, 2nd Floor, 15/54-B, Civil Lines, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Alok Kumar Agrawal, Advocate Mr. Mohit Agrawal, Advocate
For the State	:	Mr. Vikash Kumar, SC-11
For the Respondent/s	:	Mr.Dr. K.N. Singh, ASG 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 : 22-07-2021

The petitioner has prayed for the following relief/s :-

- a) For quashing of the impugned notice in Form DRC-13 bearing Memo No. 346 dated 03.02.2021 issued to the Respondent Bank in respect of DRC-07 (Demand Notice) for recovery of demand of Rs. 9,65,655/- by attachment



of the Bank Accounts of the Petitioner Firm as the same is in violation of provisions of Section 83 of the Central GST Act, 2017 and consequential direction to release the Bank Accounts of the Petitioner Firm;

- b) For quashing of the order dated 12.03.2020 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. 10,42,322/- as the same is passed in violation of the Principles of Natural Justice as the Respondents have failed to consider the show cause reply submitted by the Petitioner Firm and provide Personal Hearing to the Petitioner;
- c) 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;
- d) 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;
- e) 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;
- f) 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;

- g) 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;
- h) 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 off 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; any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case.



Petitioner has prayed for quashing of the summary of order in Form GST DRC-07 dated 12.03.2020 issued by the Respondent No. 4 namely Assistant Commissioner of State Tax, Patna Central Circle, Patna in GSTIN -10ABHPV6208P1ZB as also the notice to a third person under Section 79(1)(c) dated 03.02.2021 (Annexure-5) issued by Respondent No. 4 namely Assistant Commissioner of State Tax, Patna Central Circle, Patna, which is *ex parte* in nature.

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 summary of order in Form GST DRC-07 dated 12.03.2020 issued by the Respondent No. 4 namely Assistant Commissioner of State Tax, Patna Central Circle, Patna in GSTIN -10ABHPV6208P1ZB as also the notice to a third person under Section 79(1)(c) dated 03.02.2021 (Annexure-5) issued by Respondent No. 4 namely Assistant Commissioner of State Tax, Patna Central Circle, Patna;

(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 3rd 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 vires of Section 16(4) of GST Act [prayer (c)] by way of separate proceedings.

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

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

(q) 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;

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

(s) If possible, proceedings during the time of current Pandemic [Covid-19] be conducted through digital mode;

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)

Ashwini/Sujit/

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

