

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12862 of 2021

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M/s Walaji Arms (Wala Jee Arms) a proprietorship firm having its place of business at Bari Bazar, Shiv Nandan Palace, Munger, through its proprietor namely Santosh Kumar, male aged about 47 years son of Visheshwar Poddar resident of House No. 128, Village-Maksuspur, District-Munger-811201.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeals), Bhagalpur Division, Bhagalpur.
3. The Joint Commissioner of State Taxes, Munger Circle, Munger.
4. The Assistant Commissioner of State Taxes, Munger Circle, Munger.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Gautam Kumar Kejriwal, Advocate
		Mr. Alok Kumar Jha, Advocate
For the Respondent/s	:	Mr.Vivek Prasad (GP7)

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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 : 29-07-2021

Petitioner has prayed for the following relief(s):



- a) For issuance of a writ in the nature of certiorari for quashing of the ex - parte order dated 23.11.2018 whereby the petitioner's claim of input tax credit for the financial year 2015 - 2016, 2016 - 2017 and 2017 - 2018 (first quarter) has been rejected by the respondent No. 3;
- b) For issuance of a writ in the nature of certiorari for quashing of the ex - parte order dated 23.02.2019 and 04.09.2019 and summary of order in form GST DRC - 07 dated 05.09.2019 passed and issued by the respondent number 3 whereby the claim of the petitioner for transitional credit of input tax credit filed in form TRAN - 1 under section 140 of the Bihar Goods And Services Tax Act, 2017 (hereinafter referred to as the Bihar Act 2017 for short) has been rejected as a sequel to the ex - parte order dated 23.11.2018 rejecting the petitioner's entitlement to input tax credit carried forward for the financial year 2015 - 2016, 2016 - 2017 and 2017 - 2018;
- c) For issuance of a writ or order or direction for release/de-freezing of the bank accounts of the petitioner which are lying attached on account of action taken by the respondent No. 3 in exercise of power under section 79 (1) (c) of the Bihar Act 2017;
- d) For issuance of a writ or order or direction holding the action of the respondent number 3 already taken in terms of section 79 (1) (c) of the Bihar Act 2017 for recovery of the amount of tax, interest and penalty imposed in terms of the order dated 23.02.2019 and 04.09.2019 being illegal and without jurisdiction as it is not preceded by due compliance of the condition mandated in the proviso to section 78 of the Bihar Act 2017;
- e) For issuance of a writ or order or direction restraining the respondent No. 3 from making any coercive recovery of the amount in demand (tax, interest and penalty) as contained in the order dated 23.02.2019 and 04.09.2019 and the summary of order issued in form GST DRC - 07 dated 05.09.2019 during the pendency of the present writ application;
- f) For grant of 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 orders dated 23rd of November, 2018, 23rd of February, 2019 and 4th of September, 2019, passed by the Respondent No. 3 namely the Joint Commissioner of State Taxes, Munger Circle, Munger in GSTIN/ID 10ASOPK7777Q1ZU for the financial years 2015-2016, 2016-2017 and 2017-2018, and summary of order in Form GST DRC-07 dated 5th of September, 2019, the claim of the petitioner for transitional credit of input tax credit filed in Form TRAN-1 under Section 140 of the Bihar Goods and Service Tax Act, 2017 has been rejected. The order 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 orders dated 23rd of November, 2018, 23rd of February, 2019 and 4th of September, 2019, passed by the Respondent No. 3 namely the Joint Commissioner of State Taxes, Munger Circle, Munger in GSTIN/ID 10ASOPK7777Q1ZU for the financial years 2015-2016, 2016-2017 and 2017-2018, and summary of order in Form GST DRC-07 dated 5th of September, 2019;

(b) The petitioner undertakes to deposit ten per cent of the amount of the demand raised before the Assessing Officer. This shall be done within four weeks.

(c) 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;

(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 Assessing Authority on 29th of September, 2021 at 10:30 A.M., if possible through digital mode;

(f) The Assessing Authority shall decide the case 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 case, no coercive steps shall be taken against the petitioner.

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

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

(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 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	

