IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15526 of 2021

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M/s Aditya Polytechnic Private Limited having its office at mezzaine floor, Surya Vihar Apartment, Exhibition Road, Patna, Bihar, 800001 through its Director, Ankur Palriwal (Male), aged about 36 years, S/o Lakshman Kumar Palriwal, residing at Flat No. 601, 6th Floor, B-Block, Aary Samaj Road, Jeevan Sri Inclev, Road No. 4, Danapur-cum-Khagaul, P.S. Danapur, District Patna Bihar 801503.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
2. The Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
3. The Joint Commissioner of State Tax, Gandhi Maidan Jurisdication, Gandhi Maidan, Patna West, Bihar.
4. The Additional Commissioner State Tax (Appeals), West Division, Patna.
5. The Assistant Commissioner of State Tax, Gandhi Maidan Jurisdiction, Gandhi Maidan Patna West, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Brisketu Sharan Pandey, Advocate
		Mr. Vijoy Kumar Singh, Advocate
		Mr. Abhishek Kumar, Advocate
		Mr. Madan Kumar, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (SC 11)

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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 : 08-09-2021

Petitioner has prayed for the following relief(s):

(i) For issuing a writ of certiorari or any other appropriate writ quashing/ setting aside the Appellate order dated 18.03.2020 bearing Case no. GST/GM/64/19-20 / Memo No. 378 passed by Respondent No. 4 for the month July 2019 (Annexure-P/6_Series) whereby and where under the appeals filed by the petitioner has been rejected on the grounds of limitation;

(ii) For issuing a writ of certiorari or any other appropriate writ quashing/ setting aside the best-judgment assessment order dated 11.09.2019 (order No.1038) (Annexure- P/2) passed by Respondent No. 5 for the month July 2019 whereby and where under the ex parte best- judgment assessment order has been passed under Section 62 of the CGST Act, 2017, for the aforesaid month;

(iii) For issuing a writ of certiorari or any other appropriate writ quashing/ setting aside the demand issued in form DRC 07-order dated 11.09.2019 (order No. ZA1009190061510) (Annexure- P/3) passed by Respondent No. 5 for the month July 2019 whereby and where under the ex-parte demand order DRC 07 have been issued under Rule 73(5) of the CGST/BGST Rules, 2017, for the aforesaid month;

(iv) For issuing a writ of mandamus or any other appropriatewrit directing the Respondents not take any coercive action including recovery from bank account and third parties until pendency of the present writ application;

(v) For issuing writ of mandamus and thereby directing the Respondents to refund a sum of Rs.2,91,168/- {Rs.1,45,584/- (CGST) & Rs.1,45,584/- (SGST)} for month July 2019, for which the petitioner has deposited ten percent of disputed tax amount as needed to be paid as pre-deposit (Section 107(6)(b) of Central Goods and Service Tax Act, 2017) before filing an appeal under CGST/SGST for the disputed period of July-2019 of F.Y. 2019-20;

(vi) For issuing a writ of mandamus or any other appropriatewrit holding that inasmuch as the Petitioner has alreadyfiled the return for the month of July 2019 and paid the amounts of

IGST, CGST and SGST along with late fee, which is far in excess of the amounts demanded by the best- judgment assessment order dated 11.09.2019 for July-19, thus, no further recovery can be made under the said order;

(vii) For issuance of appropriate direction including the mandamus directing the respondents to pass fresh assessment order for the period until March 2020 (i.e. F.Y. 2019-20) to ascertain any additional liability/ discrepancy found after scrutiny of the return filed u/s 61 since as per the petitioner he has already filed all his monthly returns and there is no outstanding liability till March 2020 (i.e. F.Y. 2019-20);

(viii) For passing any such other order/orders as this Hon'bleCourt may deem fit and proper in the facts and circumstances of the case.

It is brought to our notice that vide impugned order dated 18.03.2020 passed by the Respondent No. 4 namely the Additional Commissioner of State Tax (Appeals), West Division, Patna in Case No. GST/GM/64/19-20/Memo No. 378, the appeal of the petitioner against the order dated 11.09.2019 (order No. 1038) passed by respondent No.5, namely the Assistant Commissioner of State Tax, Gandhi Maidan Jurisdiction, Gandhi Maidan, Patna West, and summary of order dated 11.09.2019 in Reference

No.ZA1009190061510, for the month of July, 2019 under Rule 73(5) of the CGST/BGST Rules, 2017 in Form GST DRC-07, has been rejected merely on the grounds of being barred by limitation. Both the orders were *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 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 18.03.2020 passed by the Respondent No. 4 namely the Additional Commissioner of State Tax (Appeals), West Division, Patna in Case No. GST/GM/64/19-20/Memo No. 378, the order dated 11.09.2019 (order No. 1038) passed by respondent No.5, namely the Assistant Commissioner of State Tax, Gandhi Maidan Jurisdiction, Gandhi Maidan, Patna West, and summary of order dated 11.09.2019 in Reference No.ZA1009190061510, for the month of July, 2019 under Rule 73(5) of the CGST/BGST Rules, 2017 in Form GST DRC-07;

(b) We accept the statement of the petitioner that twenty per cent of the total amount 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 25th of October, 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)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	15.09.2021
Transmission Date	