IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10313 of 2020

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M/s Himalaya Agro Chemicals Private Limited, Unit - II, a Company incorporated under the provisions of the Companies Act, 1956, having its Unit at NH- 31, Bypass Road, Belori, Purnia, Bihar, through its Director, Kumar Krishna Prakash, aged about 58 years (Male), son of Onkarmal Agrawal, Resident of Unit - II, NH- 31, Bypass Road, P.S. Sadar, District - Purnia.

... ... 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 Assistant Commissioner of Central Taxes, Purnia Circle, Purnia.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Avinash Shekhar, Adv,,
For the Respondent/s	:	Mr.Dr.K.N.Singh (ASG)

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

Date : 02-07-2021

Petitioner has prayed for the following relief(s):

"i. For declaring the provision of law incorporated under Section 16(4) of the Central Goods & Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act') as being ultra vires the provisions of Article 265 of the Constitution of India.

ii) For quashing of the advisory issued by the respondent Central Government dated 24.01.2020, communicated to the petitioner through e-mail, regarding inadmissibility of input tax credit on account of delay in filing the return, in terms of Section 16(4) of the CGST Act.

iii) For a declaration that Section 16(4) of the CGST Act, as also the State Goods & Services Tax Act, 2017, defeats the object and purpose of indirect taxation, for which such law has been enacted.

iv) To hold and declare that the provision of Section 16(4) of the CGST Act tantamount to double taxation, without there being any corresponding/remedial provision under the CGST Act.

v) To hold and declare that denial of input tax credit in terms of Section 16(4) of the CGST Act runs contrary to the provision as contained under Section 39, Section 47, read with Section 49 of the CGST Act, which permits delayed filing of return along with penalty.

vi) To hold and declare that the same piece of legislation being the CGST Act, 2017 on the one hand can permit delayed filing of return and on the other hand deny input tax credit already transferred to the State exchequer, which is part of the return filed belatedly with find, as prescribed under the enactment.

vii) For a declaration that Section 16(4) of the CGST Act is directory in nature and not mandatory as the same cannot take away substantial right of a dealer who has already paid tax and in the garb of denial of input tax credit the State cannot repeatedly impose tax on the same transaction, without disputing or refunding the tax already paid.

viii) For issuance of a writ in the nature of certiorari for quashing of the advisory dated 24.1.2020 whereby and whereunder the credit availed by the petitioner has been held to be inadmissible on account of delayed filing of return; and for any other relief or reliefs to which the petitioner may be found entitled in the facts and circumstances of the case."

It is brought to our notice that impugned Advisory has been issued by the respondent Central Government dated 24.1.2020, communicated to the petitioner through e-mail, regarding inadmissibility of input tax credit on account of delay in filing the return, in terms of Section 16(4) of the CGST Act.

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 Advisory has been issued by the respondent Central Government dated 24.1.2020, communicated to the petitioner through e-mail, regarding inadmissibility of input tax credit on account of delay in filing the return, in terms of Section 16(4) of the CGST Act;

(b) We accept the statement of the petitioner that twenty 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 twenty 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 9th of August, 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) 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	07.07.2021
Transmission Date	