IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2360 of 2021

M/s Deora Electric Works having its registered Office at Prabhu Kripa Tower, Second Floor, 58-A, Sadar Patel Marg, Allahabad-21001 and Its regional Office at Vikash Nagar, BIhta, Patna-801103 through its Partner Mr. Ashok Kumar Deora.

... ... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. Commissioner, Commercial Tax Department, Govt. of Bihar, New Secretariat, Patna.
3. Additional Commissioner, Commercial Taxes, Patna West Division, Patna.
4. Joint Commissioner of State Tax, Danapur Circle, Danapur, Patna.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Anurag Saurav, Advocate Mr. Abhinav Alok, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC 11

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 : 22-07-2021

Petitioner has prayed for the following relief(s):

> "i. For quashing of order dated 09.03.2020 in Appeal no. GST/DN-50/19-20 (period 01.07.2017- 31.03.2018) passed by Additional Commissioner, Commercial Taxes (Appeal), Patna West Division, Patna whereby and where under the Additional Commissioner (Appeal) dismissed the application without providing any opportunity of hearing to the petitioner and

the hard copy of appeal was filed by the petitioner on 07.03.2020 and without issuing any notice the appellate authority had passed the ex-parte order on 09.03.2020.

ii. For quashing of order dated 21.12.2018 under section 73(9) of BGST Act, 2017 passed by Joint Commissioner, Danapur Circle and demand notice dated 09.02.2020 issued under section 79(1)(c) of BGST Act, 2017 by Joint Commissioner, Danapur Circle, Danapur, Whereby and Where under a tax of Rs. 18,69,286.00 which includes Tax amount of Rs. 13,94,990/-, interest Rs. 3,34,797/- and penalty amounting Rs. 1,39,499/- has been imposed to the petitioner without considering the fact that the petitioner had acted in bonafide manner and make deduction of WCT (In lieu of C-II Certificate) from the output tax in their return and thereafter the input tax amount was deducted from leftover output tax after deduction of WCT and the balance Input Tax were carried forward in TRAN-1.

iii. For granting refund of Rs.13,95,000/- which was deducted by the employer of the petitioner from the Invoices after issuance of C-II certificate to the petitioner and in case the credit of amount has not been given from output tax then the admitted paid tax amount of the petitioner required to be refunded by the respondent authority.

iv. For restraining the respondent authorities from recovery of tax amount from the petitioner during the pendency of writ application.”

It is brought to our notice that vide impugned order dated 09.03.2020, passed by the Respondent No. 3, namely the Additional Commissioner, Commercial Taxes (Appeal), Patna West Division, Patna in Appeal No. GST/DN-50/19-20, the appeal of the petitioner against the order dated 21.12.2018 passed by respondent No.4, namely Joint Commissioner of State Tax, Danapur Circle, Danapur, Patna has been rejected without providing any opportunity of hearing to the petitioner and vide demand notice dated 09.02.2020 issued under section 79(1)(c) of BGST Act, 2017 , tax amount of Rs.13,94,990/- interest Rs. 3,34,797/- and penalty of Rs.1,39,499/- has been imposed.

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 09.03.2020, passed by the Respondent No. 3, namely the Additional Commissioner, Commercial Taxes (Appeal), Patna West Division, Patna in Appeal No. GST/DN-50/19-20, the order dated 21.12.2018 passed by respondent No.4, namely Joint Commissioner of State Tax, Danapur Circle, Danapur, Patna and the demand notice dated 09.02.2020;

(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 22nd 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;

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	29.07.2021
Transmission Date	