IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3746 of 2021

Soma Indus Varanasi Aurangabad Tollway Private Limited, represented through Mr. Vivek Sood, Chief Financial Officer of the company and having its office at Dani Bigha, Old GT Road, Aurangabad, Bihar, 824101

... ... Petitioner/s

Versus

1. The State of Bihar, through Secretary cum Commissioner, Department of Commercial Taxes, Patna.
2. The Office of the Joint Commissioner of State Tax Aurangabad, Magadh, Bihar
3. The Office of the Additional Commissioner of State Tax (Appeals), Magadh Division, Gaya, Bihar.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shourya Sanyal, Advocate Mrs.Charanya, Advocate Mr. Brishketu Sharan Pandey, Advocate Mr. Abhishek Kumar, Advocate Mr. Madan Kumar, 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):

> "For issuance of a writ order or direction in the nature of appropriate writ including the writ of mandamus or any other appropriate writ quashing/setting aside the impugned order I dated 04.03.2020 and impugned order II dated 05.03.2020 issued under Section 74 of the BGST Act

for the tax periods April-September, 2019 and October, 2018-March, 2019 respectively by Respondent No. 2 and/or For issuing a Writ of certiorari or any other appropriate writ quashing/setting aside the impugned appellate orders dated 23.03.2020 dismissing the Petitioner's appeal against the impugned order I dated 04.03.2020 and impugned order II dated 05.03.2020 issued under Section 74 of the BGST Act and/or For issuing a Writ of mandamus or any other appropriate writ quashing/setting aside the impugned debit dated 17.03.2020 Rs.13,53,638/- undertaken by Respondent No. 2 from the Petitioner's Electronic Credit and Cash Ledger and directing the Respondents to refund the said amount to the Petitioner."

It is brought to our notice that vide impugned orders dated 23.03.2020, passed by Respondent No. 3, namely the office of the Additional Commissioner of State Tax (Appeals), Magadh Division, Gaya in Appeal Case Nos. AB/GST-01/2019-20 (AD1003200026425) and AB/GST-2/2019-20 (AD1003200026540), the appeals of the petitioner against the orders dated 04.03.2020 and 05.03.2020, passed by respondent No.2, namely the office of the Joint Commissioner of State Tax, Aurangabad, Magadh, for the tax period April-September, 2019 and October, 2018-March, 2019 respectively in Form GST DRC-07, have been rejected affirming the impugned orders.

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 23.03.2020, passed by Respondent No. 3, namely the office of the Additional Commissioner of State Tax (Appeals), Magadh Division, Gaya in Appeal Case Nos. AB/GST-01/2019-20 (AD1003200026425) and AB/GST-2/2019-20 (AD1003200026540) and the orders dated 04.03.2020 and 05.03.2020, passed by respondent No.2, namely the office of the Joint Commissioner of State Tax, Aurangabad, Magadh, for the tax period April-September, 2019 and October, 2018-March, 2019;

(b) Learned counsel for the petitioner submits that the entire demanded amount, both principal amount of tax as also the amount of penalty stands recovered by the respondents/paid by the petitioner. Statement accepted and taken on record;

(c) 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;

(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	