IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18720 of 2021

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M/s Laxmi Barter Private Limited, having one of its office situated at Plot No. 291, Tauzi No. 6207, Patna - Gaya Highway SH - 1, Mauza Mustafapur Gaurichak, Masaurhi, Bihar - 804451 through its Authorized Signatory Arun Bharti, Aged about 45 Years, Gender male son of Dr. Jyoti, Resident of B-4/20, Safdarjung Enclave, South - West Delhi, P.S. Safdarjung, District South Delhi, Delhi - 110029.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. The Principal Chief Commissioner, CGST, Central Revenue Building, Birchand Patel Path, Patna.
3. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna.
4. The Additional Commissioner of State Taxes (Appeals), Patna West Division, Patna.
5. The Assistant Commissioner of State Taxes, Patna Central Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Alok Kumar, Advocate Mr. Arjun Kumar, Advocate
For the Respondent/s	:	Dr. K N Singh (A.S.G.) Mr. Anshuman Singh, Sr. Standing Counsel Mr. Sriram Krishna, A.C. to S.C. 11

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

Date : 15-11-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

> "(i) For consequential writ or order for quashing of summary of order issued in Form GST DRC-07 dated 02.03.2020 by the Assistant Commissioner, State

Tax, Patna Central Circle, Patna the Respondent No. 5 under Section 75 of the GST Act whereby the interest has been imposed on gross amount without deducting the Input Tax Credit which is already paid by the petitioner and in utter violation of the principle of natural justice as the same was passed without issuance of show cause notice in Form GST DRC-01A and GST DRC-01.

(ii) For further issuance of consequential writ or order for quashing of order dated 16.08.2021 issued vide Memos No. 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065 1066, 1067, 1068, 1069, 1070, 1071, 1073 and 1074 the Respondent No. 4, whereby the appeal preferred by the petitioner has been rejected without any application of mind to the grounds of appeal raised by the petitioner.

(iii) For further issuance of a direction or order restraining the Respondent No. 5 from taking any coercive action for recovery of the amount in demand from the petitioner during the pendency of the present writ application or for a direction to refund of the part or whole of the amount in case recovered from the petitioner

(iv) For grant of any relief or reliefs to which the petitioner is entitled in the facts and circumstances of the case."

It is brought to our notice that vide impugned orders bearing memo nos. 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1073 and 1074, dated 16th of August, 2021 (Annexure-2 series), passed by the Respondent No. 4 namely the Additional Commissioner of State Taxes (Appeal), Patna West Division, Patna, in Appeal Case Nos. AD100320001925W, AD100320001876R, AD100320001879L, AD100320001886Q, AD100320001893V, AD100320001898L, AD100320001909Q, AD100320001914Z, AD100320001917T, AD100320001865U, AD1003200019214, AD1003200019313, AD100320001934X, AD100320001939N, AD1003200019404, AD100320001927S and AD100320001944W, the appeals of the petitioner against the order dated 2nd of March, 2020, passed by the Respondent No. 5 namely the Assistant Commissioner of State Tax, Patna Central Circle, Patna, in the following cases (Annexure-1 series) has been rejected merely on the grounds of non-receipt of certified copies.

Notice/Demand Order ID	Issued by	Type	Notice/Order Description	Date of Issuance	Due date	Amount of Demand
ZA1003200008991	Bihar	Order	Summary Order	02.03.2020	07.03.2020	164,561.50
ZA100320000915F	Bihar	Order	Summary Order	02.03.2020	07.03.2020	91,572.81
ZA100320000922K	Bihar	Order	Summary Order	02.03.2020	07.03.2020	63,696.63
ZA100320000934F	Bihar	Order	Summary Order	02.03.2020	07.03.2020	164,681.88
ZA100320000964C	Bihar	Order	Summary Order	02.03.2020	07.03.2020	97,211.06
ZA1003200009759	Bihar	Order	Summary Order	02.03.2020	07.03.2020	88,122.53
ZA100320001009P	Bihar	Order	Summary Order	02.03.2020	07.03.2020	158,458.60
ZA100320001061Z	Bihar	Order	Summary Order	02.03.2020	07.03.2020	161,299.75
ZA100320001079I	Bihar	Order	Summary Order	02.03.2020	07.03.2020	85,130.90
ZA100320001098I	Bihar	Order	Summary Order	02.03.2020	07.03.2020	100,199.41
ZA100320001108P	Bihar	Order	Summary Order	02.03.2020	07.03.2020	102,490.59
ZA100320001117Q	Bihar	Order	Summary Order	02.03.2020	07.03.2020	133,011.68
ZA100320001138M	Bihar	Order	Summary Order	02.03.2020	07.03.2020	276,437.90
ZA100320001148L	Bihar	Order	Summary Order	02.03.2020	07.03.2020	308,101.30
ZA100320001166N	Bihar	Order	Summary Order	02.03.2020	07.03.2020	222,219.92
ZA100320001183R	Bihar	Order	Summary Order	02.03.2020	07.03.2020	230,343.79
ZA100320001189F	Bihar	Order	Summary Order	02.03.2020	07.03.2020	361,568.02
						2,809,108.27

Both the orders were *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 bearing memo nos. 1057, 1058, 1059, 1060, 1061, 1062, 1063, 1064, 1065, 1066, 1067, 1068, 1069, 1070, 1071, 1073 and 1074, dated 16th of August, 2021 (Annexure-2 series), passed by the Respondent No. 4 namely the Additional Commissioner of State Taxes (Appeal), Patna West Division, Patna, in Appeal Case Nos. AD100320001925W, AD100320001876R, AD100320001879L, AD100320001886Q, AD100320001893V, AD100320001898L, AD100320001909Q, AD100320001914Z, AD100320001917T, AD100320001865U, AD1003200019214, AD1003200019313, AD100320001934X, AD100320001939N, AD1003200019404, AD100320001927S and AD100320001944W as also the orders dated 2nd of March, 2020, passed by the Respondent No. 5 namely the Assistant Commissioner of State Tax, Patna Central Circle, Patna, (Annexure-1 series);

(b) Petitioner undertakes to deposit twenty 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 15th of December, 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 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)

veena/PKP

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA