IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19566 of 2021

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M/s. KEI Industries Limited a company registered under the provisions of the Companies Act, 1956, having its registered office at D-90, Okhla Industrial Area Phase - I, New Delhi - 110020, through its authorized representative, namely, Rakesh Ranjan, aged about 49 years, (Male), son of Late Bir Bhadra Bhagat, resident of Flat No. 302, Usha Enclave, Hanuman Nagar, Mahavir Nagar, P.S. - Kankarbagh, District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary - cum- Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Principal Secretary - cum- Commissioner, Department of State Taxes, Government of Bihar, Patna.
3. The Deputy Commissioner of State Taxes, Patna West Circle, Danapur, Patna.
4. The Joint Commissioner of State Taxes, Patna West Circle, Danapur, Patna.
5. The Assistant Commissioner of State Taxes, Patna West Circle, Danapur, Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Mohit Agarwal, Advocate
For the Respondent/s : Mr.Vivek Prasad (GP7)

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

Date : 29-11-2021

Petitioner has prayed for the following relief(s):

> "a) For quashing of the impugned ex-parte order and consequential demand notice both dated 30.07.2019 and bearing Reference No. ZA100719000150C, passed under Section 73(9) & 50 of the Bihar Goods and Service Tax Act, 2017 (hereinafter referred as 'BGST Act, 2017' for brevity) by the Respondent Joint Commissioner of State Taxes, Patna West

Circle, Danapur, Patna, with respect to financial year 2017-18, whereby the claim of transitional credit in TRAN- 1 from VAT regime was disallowed, as the same has been passed with considering the reply filed by the Petitioner and even according any hearing to the Petitioner Company being in violation of principles of natural justice;

b) For a declaration that the Petitioner is entitled for the claim of transitional credit in TRAN- 1 from VAT regime which was held to be wrongly availed in the impugned order dated 30.07.2019, as the same has been held to be carried forward by the Respondent Joint Commissioner of State Taxes, Patna West Circle, Danapur, Patna in its re-assessment order dated 21.09.2021 passed under Section 8 of the Bihar Entry Tax Act, 1993 read with Section 31 of the Bihar Value Added Tax Act, 2005 (hereinafter referred as 'Bihar VAT Act, 2005' for brevity);

c) For holding that if the reply to the show cause notice filed the petitioner could have been considered or an opportunity of hearing could have been accorded to the Petitioner in the proceedings of passing of the impugned Section 73 of the BGST Act, 2017 proceeding, the Petitioner could have explained that its claim of transitional credit in TRAN- 1 from VAT regime is legitimate and the Petitioner is entitled for the same; any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case."

It is brought to our notice that vide impugned ex parte order and consequential demand notice dated 30.07.2019, passed by the Respondent No. 4 namely the Joint Commissioner of State Taxes, Patna West Circle, Danapur, Patna in Reference No. ZA100719000150C, under Section 73(9) and 50 of the Bihar Goods and Service Tax Act, 2017 for the tax period 2017-2018 in

Form GST DRC-01, a demand of Rs.16,12,892.00 has been raised against the petitioner.

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 ex parte order and consequential demand notice dated 30.07.2019, passed by the Respondent No. 4 namely the Joint Commissioner of State Taxes, Patna West Circle, Danapur, Patna in Reference No. ZA100719000150C, under Section 73(9) and 50 of the Bihar Goods and Service Tax Act, 2017 for the tax period 2017-2018 in Form GST DRC-01;

(b) We accept the statement of the petitioner that Rs.3.2 lacs already stands deposited.

(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 5th of January, 2022 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/-Veena

AFR/NAFR	
CAV DATE	
Uploading Date	10.12.2021
Transmission Date	