IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1135 of 2022

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East India Udyog Limited a Registered Company having its one of the Place of Business at House Number-76, Kavi Raman Path, Nageshwar Colony, Boring Road, Patna, Bihar-800001 through its the a Registered Company having its One of the Place of Business at House Number-76, Kavi Raman Path, Nageshwar Colony, Boring Road, Patna, Bihar-800001 through its the Deputy Manager Namely Vikash Kumar Male aged about 35 Years Son of Shri Dwarika Prasad Singh Resident of Plot No. 2500-B, KH.NO. 82/24, Jain Nagar, Trithankar Nagar, Village-Karala, North West Delhi, Delhi-110081.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes, (Appeal), Central Division, Patna.
3. The Joint Commissioner of State Taxes, Patliputra Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Gautam Kumar Kejriwal, Advocate

For the Respondent/s : Mr.Vikash Kumar, SC 11

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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 : 31-01-2022

Heard learned counsel for the parties.

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

a) For issuance of a writ in the nature of certiorari for quashing of the appellate order dated 13.11.2021 passed and issued vide memo number 666 by the respondent number 2 whereby the appeal preferred by the petitioner under section 107 of the Central Goods and Service Tax Act 2017 (hereinafter referred to as the Central Act 2017 for short) Bihar Goods And Services Tax Act 2017 (hereinafter referred to as the Bihar act 2017 for short) has been rejected on misconceived and erroneous interpretation of the provisions of section 107(6)(1) of the Central Act 2017 and Bihar Act 2017;

b) For issuance of a writ in the nature of certiorari for quashing of the order dated 02.09.2021 passed by the respondent No. 3 under section 73 of the Central Act 2017 and Bihar Act, 2017 and summary of order issued in form GST DRC – 07 dated 02.09.2021 by the respondent number 3 which has been passed without jurisdiction as no case is made out for invocation of jurisdiction U/s 73 when the petitioner's entitlement to transitional credit U/s 140 and it's availment has not been denied rather it is the acceptance of excess of tax and non-remittance of the same to the department by the petitioner which is the cause for initiation of proceedings;

c) For further holding and a declaration that no case U/s 73 of the Central Act 2017 and Bihar Act 2017 is made out in the undisputed facts and circumstances of this case and as such the very invocation of jurisdiction Under the said section by the respondent no. 3 is illegal and unsustainable in the eye of law;

d) For grant of 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 order dated 13.11.2021 passed by the Respondent No. 2 namely

Additional Commissioner of State Taxs(Appeal), Central Division, Patna in Appeal Case No. AD100921005512T, the appeal of the petitioner against the order dated 02.09.2021 passed by the Respondent No. 3 namely Joint Commissioner of State Taxes, Patliputra Circle, Patna in GSTIN/ID-10AAACE6839Q1Z and Summary of Order dated 02.09.2021 in Reference No. ZD1009210016522 has been rejected.

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 does not assign any reasons sufficient even decipherable from the record, as to how the officer could determine the amount due and payable by the assessee. The order 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 13.11.2021 passed by the Respondent No. 2, namely, Additional Commissioner of State Taxs (Appeal), Central Division, Patna in Appeal Case No. AD100921005512T; order dated 02.09.2021 passed by the Respondent No. 3, namely, Joint Commissioner of State Taxes, Patliputra Circle, Patna in GSTIN/ID-10AAACE6839Q1Z and Summary of Order dated 02.09.2021 in Reference No. ZD1009210016522.

(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 28.02.2022 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) We also find the authorities not to have adjudicated the matter on the attending facts and circumstances. All issues of fact and law ought to have been dealt with, even if the proceedings were to be *ex parte* in nature;

(i) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

(j) During pendency of the assessment, no coercive steps shall be taken against the petitioner.

(k) The Assessing Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(l) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(m) 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;

(n) The Assessing Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

(o) Liberty reserved to the petitioner to challenge the order before this Court, if required and desired;

(p) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(q) 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;

(r) We have not expressed any opinion on merits and all issues are left open;

(s) 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)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	02.02.2022
Transmission Date	