

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4066 of 2022

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M/s Lovely Construction (Sole Proprietorship Firm)) having its Registered Office at Ground Floor, Chandana Bhawan, Ravi Chowk, West Patel Nagar, Patna, Bihar through its Sole Proprietors Mr. Chandana Sinha.

... .. Petitioner/s

Versus

1. The Union of India, through the Secrerary, Ministry of Finance, Department of Revenue, having its Office at Room No. 46, North Block. P.O. and P.S. North Block, New Delhi-110001
2. The Central Board of Indirect Taxes and Customs, through its Chairman, Ministry of Finance, Department of Revenue, having its Office at North Block, P.O. and P.S. North Block, New Delhi-110001.
3. The Commissioner of Central Goods and Service Tax and Central Excise, Patna Having its Office at New Secretariat Patna Bihar.
4. Joint Commissioner of State Tax, Patna Central, Patna West, Bihar.
5. Asostant Commissioner of State Tax, Patna Central, Patna West, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anurag Saurav, Adv
Mr. Abhinav Alok, Adv
Mr. Priyajeet Pandey, Adv

For the Respondent/s : Mr.Dr. K.N. Singh, Sr. Adv (ASGL)
Mr. Anshuman Singh, Sr. S.C GST

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-03-2022

Heard learned counsel for the parties.

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

“(i) For setting aside order dated 10.02.2021 passed by Assistant Commissioner of State Tax Jurisdiction, Patna, Central, Patna West, Patna has rejected the input tax credit claim of the petitioner and imposed the tax amounting of Rs. 24,83,258/- was imposed on the petitioner including penalty under section 73(9) of BGST Act and a direction was issued to initiate a recovery proceeding of the tax without providing any further notice to the petitioner.”

It is brought to our notice that vide impugned order dated 10.02.2021, passed by the Respondent No. 5, namely, the Assistant Commissioner of State Taxes, Patna Central, Patna West, Bihar, in GSTIN 10BTJPS7434R2ZZ, under Section 73(9) of BGST Act, 2017 for the tax period 2018-19, a demand of Rs.24,83,258/- has been raised.

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 10.02.2021, passed by the Respondent No. 5, namely, the Assistant Commissioner of State Taxes, Patna Central, Patna West, Bihar, in GSTIN - 10BTJPS7434R2ZZ, under Section 73(9) of BGST Act, 2017 for the tax period 2018-19;

(b) The 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 11.04.2022 at 10:30 A.M.,;

(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; and

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

The instant petition stands 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)

Ranjan/Sanjay-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	