

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4510 of 2022

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M/s Applied Solar Technologies (India) Private Limited having its Registered office at 303, Grand Doomri House, Exhibition Road, Patna- 800001 through its Authorized Signatory Mr. Mrityunjoy Kumar Dubey.

... .. Petitioner/s

Versus

1. The Union of India through its Secretary and Commissioner, (GST), Ministry of Finance, Department of Revenue, having its office at Central Secretariat, North Block, New Delhi- 110001.
2. The State of Bihar through the Secretary cum-Commissioner, Commercial Tax Department, New Secretariat, Govt. of Bihar, Patna.
3. The Joint Commissioner of State Taxes, Patna South Circle, Patna.
4. The Deputy Commissioner of State Taxes, Patna South Circle, Patna.
5. The Assistant Commissioner of States Tax, Patna South Circle, Patna.
6. The Additional Commissioner (Appeal), SGST, Patna West Division, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anurag Saurav, Advocate Mr. Priyajeet Pandey, Advocate Mr. Abhinav Alok, Advocate
For the Respondent/s	:	Dr. K.N. Singh, ASG Mr. Sri Ram Krishna, Advocate Mr. Anshuman Singh, Sr. SC CGST & CX 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)

Date : 25-04-2022

Heard learned counsel for the parties.

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



- A) For quashing of order dated 16.08.2019 passed by respondent no.4 whereby and where under the claim of petitioner under section 140 of BGST Act read with Rule 117 of the BGST Rules has been rejected and entry tax credit of an amount of Rs. 37,99,964/- for the financial year 2017-18 was not accepted by respondent authorities and an amount of Rs. 52,05,950/- was imposed as SGST Tax, interest and penalty.
- B) For quashing of DRC-07 dated 29.08.2019 issued by respondent no.4 under Rule-142(5) of BGST Rules whereby and where under a demand of tax including interest and penalty of an amount of Rs. 52,05,950/- was made from the petitioner.
- C) For quashing of order dated 04.10.2021 whereby and where under appeal bearing Appeal No. GST/PS-31/19-20 filed by petitioner against order dated 16.08.2019 was dismissed without appreciating the grounds taken by the petitioner before the appellate authorities.
- D) For issuance of any other appropriate writ(s), order (s) or direction (s) as your lordship may deem fit and proper in the facts and circumstances of the case for doing justice.

It is brought to our notice that vide impugned order dated 04.10.2021 passed by the Respondent No. 6 namely Additional Commissioner (Appeal), SGST, Patna West Division,



Patna, in Appeal Case No. GST/PS-31/19-20 (Annexure-6), the appeal of the petitioner against the order dated 16.08.2019 passed by the Respondent No. 4 namely the Deputy Commissioner of State Taxes, Patna South Circle, Patna in GSTIN-10AAHCA4863F1Z1 and Summary of the Order in Form GST DRC-07 dated 29.08.2019 in Reference No. ZA100819002356S, Annexure-4 has been rejected without complying with the principles of natural justice.

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 reasons sufficient 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. 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.

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 04.10.2021 passed by the Respondent No. 6 namely Additional Commissioner (Appeal), SGST, Patna West Division, Patna, in Appeal Case No. GST/PS-31/19-20 (Annexure-6); order dated 16.08.2019 passed by the Respondent No. 4 namely the Deputy Commissioner of State Taxes, Patna South Circle, Patna in GSTIN- 10AAHCA4863F1Z1 and Summary of the Order in Form GST DRC-07 dated 29.08.2019 in Reference No. ZA100819002356S, Annexure-4;

(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 16th of May, 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 stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, 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)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	28.04.2022
Transmission Date	

