IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6927 of 2022

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M-Electricals, a Proprietary Concern Having its Office at Fraser Road, Behind Punjab and Sind Bank, Patna Bihar through its Proprietor Abhinav Mehra (Male, aged about 37 Years) Son of Shri Uday Narayan Mehra Resident of Jay Ganga Niwas, Opp. A.N. College, Rosebud School Lane, Boring Road, Patna, Bihar-800001.

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner of State Tax, Bihar, Patna Having its Office at Vikas Bhawan, Patna.
2. Addl. Commissioner of State Tax (Appeal), West Division, Patna.
3. Asst. Commissioner of State Tax, Central Circle Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D.V.Pathy, Advocate
		Mr. Manish Kumar, Advocate
		Mr. Bijay Kumar Gupta, 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)

Date : 17-05-2022

Heard learned counsel for the parties.

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

i) the order dated 16.08.2021 (as contained in Annexure –3) passed by the respondent no. 2 in Appeal Case No. GST/PTC-69/20-21 for the period 01.04.2019 to 31.12.2019 without grant of adequate opportunity of being heard be quashed.

ii) the order dated Nil (as contained in Annexure –2 for the period 2019-20 (01.04.2019 to 09.12.2019) subjecting the alleged purchase of generator to levy of tax under the Bihar Goods and Services Tax Act, 2017 in absence of a provision to levy such tax be quashed.

iii) the demand raised in pursuance of the order of assessment (as contained in Annexure –2) be quashed.

iv) for granting any other relief (s) to which the petitioner is otherwise found entitled to.

Petitioner has prayed for quashing of the order passed by Respondent No. 3 namely Assistant Commissioner of State Tax, Central Circle, Patna in GSTIN- 10ALIPM4089Q1ZL (Annexure-2); demand raised in pursuance of the order of assessment (as contained in Annexure-2) as also the order dated 16.08.2021 passed by Respondent No. 2, namely, Additional Commissioner of State Tax (Appeal), West Division, Patna in Appeal Case No. GST/PTC-69/20-21 (Annexure-3).

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 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, we dispose of the present writ petition in the following mutually agreeable terms:

(a) We quash and set aside the impugned order passed by Respondent No. 3 namely Assistant Commissioner of State Tax, Central Circle, Patna in GSTIN- 10ALIPM4089Q1ZL (Annexure-2); demand raised in pursuance of the order of assessment (as contained in Annexure-2) as also the order dated 16.08.2021 passed by Respondent No. 2, namely, Additional Commissioner of State Tax (Appeal), West Division, Patna in Appeal Case No. GST/PTC-69/20-21 (Annexure-3);

(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 6th of June, 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	18.05.2022
Transmission Date	