IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7086 of 2022

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M/S Vikramshila Trading Company a Proprietorship Firm having its Place of Business at Rangaon, Kumar male, aged about 31 Years Son of Surendra Upadhyay resident of Village-Tarapur, P.S.-Trapur, P.O.-Tarapur, Distt.-Munger, Bihar-813321

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secrertary Cum Commissioner, Departemnt of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeals) Bhagalpur Division, Bhagalpur.
3. The Assistant Commissioner of State Taxes, Munger Cirlce, Bhagalpur, (Financial Year 2018-2019).

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Gautam Kumar Kejriwal, Adv
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 : 17-05-2022

Heard learned counsel for the parties.

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

a) For issuance of writ in the nature of certiorari for quashing of the order dated 09.03.2022 issued vide memo number 58 Bhagalpur by the respondent number 2 (hereinafter referred to as the appellate authority for short) whereby the appeal preferred by the petitioner under section 107 of the Central Goods And Services Tax Act, 2017 (hereinafter referred to as the central act 2017 for short) and Bihar Goods And Services Tax Act, 2017 (hereinafter referred to as the Bihar act 2017 for short) has been rejected;

b) For issuance of writ or order in the nature of certiorari for quashing of the order dated 18.03.2020 and the order dated 21.03.2020 passed by the respondent number 3 (hereinafter referred to as the assessing authority short) under section 74 of the central act 2017 and Bihar act 2017 and also for quashing of the summary of order issued in form GST DRC – 07 dated 21.03.2020 issued in terms of rule 142 (5) of the Central Goods and Services Tax Rules, 2017;

c) For further restraining the respondents from taking any coercive action against the petitioner for recovery of the amount of tax, interest and penalty in terms of the impugned order during the pendency of the present writ application;

d) For further holding and a declaration that mere absence of auto populated GSTR – 2A resulting in mismatch with the return filed by the petitioner in form GSTR – 3B cannot deprive the petitioner from the benefit of input tax credit;

e) For further holding and a declaration that the petitioner cannot be deprived of the benefit of input tax credit for the defaults committed by the supplier/seller as the taxes paid by the petitioner to such supplier/seller constitutes due discharge of liability from the ends of the petitioner and also that such payment of tax to the supplier/seller is as good as payment of tax to the government insofar as the true purport and meaning of section 16 (2) (c) of the central act 2017 and Bihar act 2017 is concerned;

It is brought to our notice that vide impugned order dated 09.03.2022, passed by the Respondent No. 2, namely, the Additional Commissioner of State Taxes (Appeals), Bhagalpur Division, Bhagalpur, in Appeal No. AD1003210026019 (Annexure-5), the appeal of the petitioner against the order dated 18.03.2020 passed by Respondent No. 3, namely, the Assistant Commissioner of State Taxes., Bhagalpur in GSTIN 10AYCPM5221H1Z0; and summary of order dated 21.03.2020 in Form GST DRC-07 for the month of April, 2018 to March, 2019, has been rejected by a cryptic, misconceived and non-speaking order.

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; (c) 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 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 09.03.2022, passed by the Respondent No. 2, namely, the Additional Commissioner of State Taxes (Appeals), Bhagalpur Division, Bhagalpur, in Appeal No. AD1003210026019 (Annexure-5), order dated 18.03.2020, passed by Respondent No. 3, namely, the Assistant Commissioner of State Taxes., Bhagalpur in GSTIN 10AYCPM5221H1Z0; and summary of order dated 21.03.2020 in Form GST DRC-07;

(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 01.06.2022 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)

ranjan/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	