IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7267 of 2022

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M/s Mint Environ Private Limited a Company Incorporated Under the Companies Act, 1956 having its Office at B-25 MIG, Housing Board, Colony, Sector-3, Barari District-Bhagalpur-812003 through its Director, Vasantha rani Adapala (Female), aged about 35 Years, W/o of Adapala Haraprasada Rao, Residing at Flat No. 1403,OPAL Block-M, Rainbow Vistas @ Rock Garden, Moosapet Cybercity, K.V. rangareddy, P.O.-Moosapet, P.S.-Kukatpally, District-Hyderabad, Telangana.500018.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary Department of Revenue, Ministry of Finance, North Block, New Delhi-110001.
2. The Secretary Department of Revenue, Ministry of Finance, North Block, New Delhi-110001.
3. That State of Bihar through the Commissioner Cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
4. The Commissioner Cum Secreary, Commercial Tax Department, Govt of Bihar, Patna.
5. The Aditional Commissioner State Tax (Appeals), Bhagalpur Division, Bihar.
6. The Joint Commissioner State Tax Bhagalpur Circle, Bhagalpur, Bihar.
7. The Deputy Commissioner Of State Tax, Bhagalpur Circle, Bhagalpur, Bihar.
8. The State Bank of India, Bhagalpur Branch through its Branch Manager, Bhagalpur.
9. The UCO Bank, Bhagalpur Branch through its Branch Manager, Bhagalpur
10. The Bank of Baroda, Bhagalpur Branch through its Branch Manager, Bhagalpur
11. The Canara Bank, Bhagalpur Branch through its Branch Manager, Bhagalpur
12. The Central Bank of India, Bhagalpur Branch through its Branch Manager, Bhagalpur
13. The Punjab National Bank, Bhagalpur Branch through its Branch Manager, Bhagalpur
14. The ICICI Bank Bhagalpur Branch through its Branch Manager, Bhagalpur
15. The HDFC Bank, Bhagalpur Branch through its Branch Manager, Bhagalpur
16. The IDBI Bank, Bhagalpur Branch through its Branch Manager, Bhagalpur
17. The Allahabad Bank Bhagalpur Branch through its Branch Manager, Bhagalpur
18. The AXIS Bank, Bhagalpur Branch through its Branch Manager, Bhagalpur

19. The Maharashtra Bank/Indusind Bank Bhagalpur Branch through its Branch Manager, Bhagalpur
20. The Bank of India, Bhagalpur Branch through its Branch Manager, Bhagalpur
21. The Indian Bank Bhagalpur Branch through its Branch Manager, Bhagalpur
22. The Bandhan Bank, Bhagalpur Branch through its Branch Manager, Bhagalpur

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Brisketu Sharan Pandey, Advocate Mr.Vijay Kumar Singh, Advocate Mr. Abhishek Kumar, Advocate
For the Respondent/s	:	Dr. K.N.Singh, Additional Solicitor General Mr.Anshuman Singh, Sr. S.C., CGST & CX
For the State	:	Mr. Vikash Kumar, S.C. 11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-06-2022

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

> (i) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the summary of order/assessment order dated 02.02.2021 (Annexure-P/1) issued by Deputy Commissioner of State Tax Bhagalpur Circle, Bhagalpur, Bihar (Respondent no.7) whereby and whereunder the aforesaid Assessing Officer has quantified the tax liability, interest and penalty for the period March, 2020 (F.Y.-2019-20) and thereby has imposed cumulative liability of Rs.1,90,71,686/- for the aforesaid period towards IGST, SGST, CGST tax liability, without dealing with the grounds in the submission/reply and without stating in the order regarding the period/days of default for which the interest and penalty has been imposed.
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> (ii) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the order dated 02.02.2021 (Annexure-P/2)

bearing Reference No.ZD100221001319C issued under Section 73 of GST Act (loaded on the web portal) issued by Deputy Commissioner of State Tax, Bhagalpur Circle, Bhagalpur, Bihar (Respondent no.7) whereby and whereunder the aforesaid Assessing Officer has quantified the tax liability, interest and penalty for the period March, 2020 (F.Y. 2019-20) and thereby has imposed cumulative liability of Rs.1,90,71,686/- for the aforesaid period towards IGST, SGST, CGST tax liability, without dealing with the grounds in the submission/reply and without stating in the order regarding the period/days of default for which the interest and penalty has been imposed.

(iii) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the Demand DRC 07 dated 02.02.2021 (Annexure-P/3) bearing Reference No.ZD100221001319C issued under Section issued under Rule 142(5) (uploaded on the web portal) issued by Deputy Commissioner of State Tax, Bhagalpur Circle, Bhagalpur, Bihar (Respondent no.7) whereby and whereunder the aforesaid Assessing Officer has issued demand order in terms of order dated 02.02.2021 (Annexure-P/1) and accordingly raised demand towards tax liability, interest and penalty for the period March, 2020 (F.Y. 2019-20) and thereby has imposed cumulative liability of Rs.1,90,71,686/- for the aforesaid period towards IGST, SGST, CGST tax liability, without dealing with grounds in the submission/reply and without stating in the order regarding the period/days of default for which the interest and penalty has been imposed.

(iv) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the order dated 25.11.2021 (Annexure P/4) bearing Memo No.357 issued by Additional Commissioner of State Tax (Appeal), Bhagalpur Division, Bhagalpur (Respondent no.5) whereby and whereunder the aforesaid Appellate Authority upon rejection of the appeal has affirmed the impugned order dated 02.02.2021 issued by the

Ld. Assessing Authority (Respondent no.7 and thereby has upheld the demand towards tax liability, interest and penalty for the period March, 2020 (F.Y.-2019-20) and has also upheld the imposition of cumulative liability of Rs.1,90,71,686/- for the aforesaid period towards IGST, SGST, CGST tax liability without dealing with the grounds in the appeal and without stating in the order regarding the period/days of default for which the interest and penalty has been imposed.

(v) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the summary of demand by the appellate authority issued under FORM APL GST 04 dated 26.11.2021 (Annexure P/5) bearing order No.ZD101121013323K issued by Additional Commissioner of State Tax (Appeal), Bhagalpur Division, Bhagalpur Bihar (Respondent no.5) whereby and whereunder the aforesaid Appellate Authority upon rejection of the appeal has issued demand afresh by affirming the impugned demand order DRC/07 order dated 02.02.2021 issued by the Ld. Assessing Authority (Respondent no.7 and thereby has upheld the demand towards tax liability, interest and penalty for the period March, 2020 (F.Y. 2019-20) and has also upheld the imposition of cumulative liability of Rs.1,90,71,686/- for the aforesaid period towards IGST, SGST, CGST tax liability without dealing with the grounds in the appeal and without stating in the order regarding the period/days of default for which the interest and penalty has been imposed.

(vi) For issuing writ of certiorari and thereby quashing the DRC-13 dated 25.02.2022, as also the letter dated 25.02.2022 bearing Memo No.54 both issued by Respondent no.7 whereby and whereunder resorting to special mode of recovery the Banker of the petitioner company has been directed to prepare a cheque/DD towards the amount worth Rs.1,73,90,650/- in favour of the Respondents.

(vii) For declaration that Section 16(4) of the CGST and BGST Act to the extent it seeks to deny input tax credit if not taken within the due date of furnishing of the return for the month of September following the end of the financial year to which any invoice or debit note pertains or furnishing of annual return, whichever is earlier is arbitrary and illegal.

(viii) For a declaration that the conditions as prescribed in Section 16(4) of the CGST and BGST Act are merely procedural in nature and cannot override the substantive conditions as mandated in Section16(1) and Section 16(2) of the said Acts.

(ix) For a declaration that in view of the non obstante clause present in Section 16(2) of the CGST and BGST Act the same would prevail over Section16(4) of the said Acts.

(x) For a declaration that on true interpretation of Section 16(4) of the CGST and BGST Act the embargo in the said provision would apply only to restrict claim of input tax credit in respect of invoices or debit notes received after the end of the financial year beyond September of the preceding financial year and not such claims in a belated return filed after such date.

(xi) For issuing writ of mandamus and thereby directing the Respondents No.5 and 7 as also the Banks i.e. Respondent no.8 to 22 restraining them from taking any coercive action as also implementing the direction issued under the DRC 13 dated 25.02.2022 issued by Respondent no.7.

(xii) For issuing writ of mandamus and thereby directing the Respondents to refund a sum of Rs.16,81,036/- paid by the petitioner as pre-deposit worth 10% of disputed tax amount as needed to be paid as pre-deposit (Section 107(6)(b) of Central Goods and Service Tax Act, 2017) before filing an appeal under CGST/SGST for the month March, 2020;

(xiii) For issuing writ of mandamus and thereby directing the Respondents to refund a sum of Rs.46,22,581/- which has been recovered from the credit ledger of the petitioner on 24.02.2022.

(xiv) For issuing writ of mandamus as a consequential relief and thereby directing the Respondents to uphold the return GSTR-3B filed by the petitioner for the month March, 2020 as also the claim of Input Tax Credit (ITC) availed by the petitioner which has been wrongly rejected by the Respondents No.7 and 5 while issuing the impugned assessment order as also the appellate order respectively;

(iv) For issuing a writ of mandamus or any other appropriate writ directing the Respondents not take any coercive action including recovery from bank account and third parties until pendency of the present writ application;

(xvi) For passing any such other order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

It is brought to our notice that vide impugned order dated 25.12.2021 passed by the Respondent No. 5 namely the Additional Commissioner of State Tax (Appeals), Bhagalpur Division, Bhagalpur, in Appeal No.AD100321004585T, the appeal of the petitioner against the order dated 02.02.2021 passed by Respondent No. 7, namely the The Deputy Commissioner of State Tax, Bhagalpur Circle, Bhagalpur, in Form GST DRC-07 for the month of March, 2020, has been rejected on the ground of the same being barred by limitation.

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 and the limitation shall not be allowed to come in the way. 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 25.12.2021 passed by the Respondent No. 5 namely the Additional Commissioner of State Tax (Appeals), Bhagalpur Division, Bhagalpur, in Appeal No.AD100321004585T, and the order dated 02.02.2021 passed by Respondent No. 7, namely the The Deputy Commissioner of State Tax, Bhagalpur Circle, Bhagalpur, in Form GST DRC-07 as also the consequential orders, including that of attachment;

(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 18th of July, 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)

K.C.Jha/chn

AFR/NAFR	
CAV DATE	
Uploading Date	25.06.2022
Transmission Date	