IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7558 of 2022

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M S Scientifics and Aqua Systems a proprietary concern having its office at Bhatkhora, Madhepura, Bhatkhori Murliganj, Madhepura, Bihar 852114 through its proprietor Harish Menon (Male, aged about 46 years) son of Late A.P Menon resident of 12-5-23/2 S1, Navjeevan Apartments, Vijayapuri Colony, Tarnaka, Secunderabad, Hyderabad, Andhra Pradesh - 500017.

... ... Petitioner/s

Versus

1. State of Bihar through Commissioner of State Tax, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Asst., Commissioner of State Tax, Danapur, West, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.D.V.Pathy, Advocate

For the Respondent/s : 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

Heard learned counsel for the petitioner and the learned counsel for the respondents.

Petitioner has sought for following relief(s) : -

> (i) the summary of show cause notice dated 23.12.2020 (as contained in Annexure-3) issued by the respondent no.2 for the Tax Period April 2019 to March, 2020 be quashed.
>
> (ii) the summary of show cause notice dated 29.12.2020 issued by the respondent no.2 under Section 73 of the Bihar Goods and Services Tax Act, 2017 in Form DRC 01 (as contained in Annexure-4 series) for the Tax Period April, 2019 to March, 2020 be quashed.
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> (iii) the order dated 04.02.2021 (as contained in Annexure-5) passed by the

respondent no.2 under Section 73 (9) of the Bihar Goods and Services Tax Act, 2017 for the period April, 2000 22.06.2020 (FY 20-21) be quashed.

(iv) the order dated 14.02.2021 (as contained in Annexure-6) passed by the respondent no.2 under Section 73(9) of the Bihar Goods and Services Tax Act, 2017 for the Tax Period April, 2019 to March,2020 be quashed.

(v) the order dated 14.02.2021 (as contained in Annexure 6) passed by the respondent no.2 under Section 73(9) of the Bihar Goods and Services Tax Act, 2017 for the Tax Period April 2019 to March, 2020 prior to insertion of sub clause (aa) in Section16(2) of the Act 13 of 2021 w.e.f. 01.01.2022 be quashed.

(vi) the notice of demand dated 14.02.2021 (as contained in Annexure-6 series) issued by the respondent no.2 for the Tax Period April, 2019 to March, 2020 be quashed.

(vii) For granting any other relief (s) to which the petitioner is otherwise found entitled to."

It is prayed that the impugned orders dated 04.02.2021 and 14.02.2021 passed by the Respondent No. 2 namely the Assistant Commissioner of State Tax, Danapur West, Patna in GSTIN 10AIRPM9012H1ZC, under Section 73(9) of BGST Act, 2017 and summary of show cause in Form GST DRC-01 dated 23.12.2020 and 29.12.2020, for the tax period April, 2019 to March,2020, have been passed without following the principles of natural justice and the same may be quashed.

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 orders dated 04.02.2021 and 14.02.2021 passed by the Respondent No. 2 namely the Assistant Commissioner of State Tax, Danapur

West, Patna in GSTIN 10AIRPM9012H1ZC, under Section 73(9) of BGST Act, 2017 and summary of show cause in Form GST DRC-01 dated 23.12.2020 and 29.12.2020;

(b) The petitioner undertakes to deposit ten 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 18th of July, 2022 at 10:30 A.M., if possible through digital mode;

(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;

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

(q) 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	