IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9136 of 2022

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M/S AST Telecom Solar Pvt. Ltd. having its Registered Office at Razia Villa, 1st Floor, South Gandhi Maidan, Near East RBI, 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 States Taxes, Patna Special Circle, Patna.
4. The Deputy Commissioner of State Taxes, Patna Special Circle, Patna.
5. The Assistant Commissioner of States Tax, Patna Special Circle, Patna.
6. The Additional Commissioner (Appeal), SGST, Patna Central Division, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Anurag Saurav, Advocate
		Mr. Abhinav Alok, Advocate
		Mr. Priyajeet Pandey, Advocate
For the Respondent/s	:	Dr. K. N. Singh, ASG
For the State	:	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 : 14-07-2022

Heard learned counsel for the parties.

The petitioner has prayed for the following relief/s :-

A) For Quashing of order dated 19.06.2019 passed under section 73 of BGST Act,2017 by respondent no.4 whereby and where under by way of an ex-partee order, 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. 2,60,14,534/- for the financial year 2017-18(01.07.2017 to 31,03,2018) was not accepted by respondent authorities and an amount of Rs. 2,60,14,534/- was imposed as SGST Tax, Rs. 74,14,142./- as interest and Rs. 26,01,453/- as penalty and a total amount of Rs.3,60,30,129/- has been imposed.

B) For Quashing of DRC-07 dated 19.06.2019 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. 3,60,30,129/- was made from the petitioner.

C) For Quashing of order dated 24.03.2022 whereby and where under appeal bearing Appeal No.AD100719000172P filed by petitioner against order dated 19.06.20199 was dismissed without appreciating the grounds taken by the petitioner before the appellate authorities.

D) For Quashing of Demand Notice dated:25.03.2022 in the Form of GST APL 04 issued under Rule 113(1) and 115 of BGST Rules, the Appellate authority determined a tax, interest and penalty amount of Rs,2,60,14,534, 1,99,01,118 and Rs. 26,01,453/-.

E) 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 24.03.2022 passed by the Respondent No. 6, namely the Additional Commissioner (Appeal), SGST, Patna, Central Division, Patna in Case No.AD100719000172P, the appeal of the petitioner against the order dated 19.06.2019 passed by Respondent No. 4, namely The Deputy Commissioner of State Taxes, Patna Special Circle, under Sections 73 of BGST Act, 2017; and summary of order dated 19.06.2019 in Form GST DRC-07 for the period 1.7.2017 to 31.03.2018, has been rejected.

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 24.03.2022 passed by the Respondent No. 6, namely the Additional Commissioner (Appeal), SGST, Patna, Central Division, Patna in Case No.AD100719000172P, the order dated 19.06.2019 passed by Respondent No. 4, namely The Deputy Commissioner of State Taxes, Patna Special Circle, under Sections 73 of BGST Act, 2017; and summary of order dated 19.06.2019 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 16th of August, 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/-

AFR/NAFR	
CAV DATE	
Uploading Date	21.07.2022
Transmission Date	