IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9511 of 2022

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M/s Tirhut Agro Agency through its Proprietor Ajit Kumar, aged about years, having its principle office at Sujawalpur, Sarmastpur, Dholi, Muzaffarpur.

... ... Petitioner/s

Versus

1. The Union of India, through the Secretary Ministry of Finance, Department of Revenue, having its office at Room No. 46, North Block, P.O. and P.S. North Block, New Delhi- 110001.
2. The Central Board of Indirect Taxes and Customs, through its Chairman, Ministry of Finance, Department of Revenue, having its office at North Block, P.O. and P.S. North Block, New Delhi- 110001.
3. The Commissioner of Central Goods and Services Tax and Central Excise, Patna having its office at New Secretariat Patna Bihar.
4. Joint Commissioner of State Tax, East Circle Muzaffarpur, Bihar.
5. Assistant Commissioner of State Tax, East Circle Muzaffarpur, Bihar.
6. Additional Commissioner (Appeal), Trihut Division, Muzaffarpur, Bihar.

... ... 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
		Mr. Anshuman Singh, Sr. S.C., CGST/CX
		Mr. Amarjeet, JC to 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 :-

(i) For issuance of an appropriate writ/order/ direction for setting aside the order dated 13.05.2022 passed by Additional Commissioner (Appeal), Tirhut Division, Muzaffarpur whereby and where under the appellate authority upheld the order dated 06.03.2020 passed by Assistant Commissioner of State Tax Jurisdiction, East Circle, Muzaffarpur and after rejecting the appeal of the petitioner a directed for issuance of APL04 of an amount of Rs. 57,26,930/- was made.

(ii) For Issuance of an appropriate writ/ order/ direction for setting aside order bearing reference no. ZA100220022240Q dated 06.03.2020 passed by Assistant Commissioner of State Tax jurisdiction, East Circle, Muzaffarpur whereby and where under respondent rejected the Input Tax Credit Claim by the petitioner in Form GSTR3B for the financial year 2018-19 and an amount of Rs. 57,26,930/- was imposed on the petitioner including penalty under section 73 of BGST Act and the said tax has been imposed to the petitioner by respondent authorities only on the sole ground that the ITC amount was not reflecting in GSTR-

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2A and the authorities while passing the order not considered the tax invoice produced by the petitioner and the said order has been passed in violation of provision of section 16(2) of BGST Act.

(iii) For setting aside DRC· 07 bearing reference no. ZA100320007175 dated 06.03.2020 issued by Assistant Commissioner of State Tax Jurisdiction, East Circle, Muzaffarpur and an amount of Rs. 57,26,930/- after rejecting the input tax credit claim of the petitioner and a demand notice under Rule 142(5) of the BGST Rule in the Form of DRC 07 was issued.

(iv) For setting aside notice for recovery/ attachment of Bank account issued by Assistant Commissioner, East Circle, Muzaffarpur vide process no. 852 dated 08.06.2022 whereby and where under it was directed to different Banks to make attachment of the Bank Account of the petitioner.

(v) For issuance of appropriate writ/order/ direction in the nature of mandamus directing the respondent authorities to release the Bank Account of the petitioner.

(vi) For issuance of an appropriate Writ(s), order(S), and/or direction(s), as Your Lordships may deem fit and proper in the facts and circumstances of this case in the interest of justice.

It is brought to our notice that vide impugned order dated 13.05.2022 passed by the Respondent No. 6, namely the Additional Commissioner (Appeal), Tirhut Division, Muzaffarpur, in Case No. ARN AD100620000880X, the appeal of the petitioner against the order dated 06.03.2020 passed by Respondent No. 5, namely the The Assistant Commissioner of State Tax, East Circle, Muzaffarpur, under Section 73 of BGST Act, 2017; and summary of order dated 06.03.2020 in Form GST DRC-07 for the financial year 2018-19 has been rejected, whereafter an ex parte order of attachment dated 08.06.2022 has been passed vide process No.852 by respondent No. 5, namely the Assistant Commissioner of State Tax, East Circle, Muzaffarpur.

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 13.05.2022 passed by the Respondent No. 6, namely the Additional Commissioner (Appeal), Tirhut Division, Muzaffarpur, in Case No. ARN AD100620000880X, the order dated 06.03.2020 passed by Respondent No. 5, namely the The Assistant Commissioner of State Tax, East Circle, Muzaffarpur, under Section 73 of BGST Act, 2017; and summary of order dated 06.03.2020 in Form GST DRC-07 for the financial year 2018-19, as also the ex parte order of attachment dated 08.06.2022 passed by respondent No. 5, namely the Assistant Commissioner of State Tax, East Circle, Muzaffarpur;

(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	