IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9877 of 2022

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Fans Asia Private Limited a registered company having its place of Business at House Number-215, Gali No. -02, New Area, Dehiri-on-Sone, Rohtas, Bihar-821307 through its authorized representative namely Mantu Prasad Verma male aged about 37 years, son of Kalpa Nath Verma, Resident of Near Lit Bishwaranjan Nagar, Kharagpur-1, Hijli, Paschim Medinipur, West Bengal-721306.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Joint Commissioner of State Taxes, Pataliputra Circle, Patna (2017-2018).

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
Mr. Alok Kumar Jha, Advocate
Mr. Mukund Kumar, Advocate
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 : 27-07-2022

Petitioner has prayed for the following relief(s):

> "a) For issuance of writ in the nature of certiorari for quashing of the ex parte order dated 02.11.2021 and also the summary of order issued in form GST DRC – 07 dated 02.11.2021 passed by the respondent number 2 under section 73 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) whereby liability of tax, interest and penalty has been imposed on grounds of allegation of excess of input tax credit claimed and utilized;

b) For further restraining the respondent number 2 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;

c) For further holding and a declaration that mere mismatch of the figures in auto populated GSTR – 2A with the return filed by the petitioner in form GSTR – 3B cannot deprive the petitioner from the benefit of input tax credit once the petitioner becomes entitled to it in terms of section 16(2) of the central act 2017 and the Bihar act 2017;

d) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case."

It is brought to our notice that vide impugned order dated 02.11.2021 passed by the Respondent No. 2, namely the Joint Commissioner of State Taxes, Patliputra Circle, Patna, the liability of tax, interest and penalty has been imposed on the ground of allegation of excess of input tax credit claimed and utilized.

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 order dated 02.11.2021 passed by the Respondent No. 2, namely the Joint Commissioner of State Taxes, Patliputra Circle, Patna;

(b) The petitioner undertakes to deposit twenty 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 29.08.2022 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/DKS

AFR/NAFR	
CAV DATE	
Uploading Date	29.07.2022
Transmission Date	