IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10780 of 2022

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M/s Shyam Indus Power Solutions Private Limited having it registered office 129, Transport Centre, Rohtak Road, Punjabi Bagh, New Delhi- 110035, Regional Office at New Sabajpur, Opposite BMP- 16, P.S. Phulwarisharif, District- Patna and local office at K/59, Majholia Road, P.S. Sadar, Mushari, District- Muzaffarpur, Bihar through its authorized signatory Mr. Satyapal Sindhu.

... ... 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, West Circle, Muzaffarpur.
5. Assistant Commissioner of State Tax, West Central, Muzaffarpur.
6. Additional Commisioner of State Tax (Appeal), Tirhut Division, Muzaffarpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Anurag Saurav, Advocate
For the Respondent/s	:	Dr. K.N. Singh, ASG
		Mr. Anshuman Singh, Sr. SC,CGST & CX
		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 : 10-08-2022

Heard learned counsel for the parties.

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

(i) For issuance of appropriate writ/order/direction for setting aside order bearing Memo no. 346 dated 02.06.2022 passed by Additional Commissioner (Appeal), Tirhut Division, Muzaffarpur in Appeal Case No. AD1002210029403 for the financial year 2018-19 whereby and where under the Appellate Authority upheld the order dated 08.01.2021 passed by Respondent no.4 and directed to pay Rs. 1,43,37,268 towards tax , interest and penalty issue APL-IV to the petitioner.

(ii) For Issuance of an appropriate writ/ order/ direction for setting aside order bearing reference no. ZD100121005040V dated 08.01.2021 passed by Joint Commissioner of State Tax jurisdiction, West 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. 71,68,634/- was imposed as tax interest

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and penalty on the petitioner under section 73 (9) of BGST Act.

(iii) For setting aside order dated 07.12.2020 passed by Joint Commissioner of State Tax Jurisdiction, West Circle, Muzaffarpur, has rejected the input tax credit of the petitioner and imposed the tax including tax and penalty amounting of Rs. 71,68,634/- on the petitioner under section 73 (9) of BGST Act and a direction was issued to raised demand in the Form of GST DRC 07.

(iv) For setting aside the demand notice issued in the Form of DRC 07

(v) 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.

(vi) Refund of the deposit made by petitioner along with interest.

(vii) Cost.

Petitioner has prayed for quashing of the order dated 02.06.2022 passed by the Additional Commissioner of State Tax (Appeal), Tirhut Division, Muzaffarpur vide Memo No. 346 in

Appeal Case No. AD1002210029403 for the period 2018-19 (Annexure-9); order dated 07.12.2020 passed by the Joint Commissioner of State Tax, West Circle, Muzaffarpur, (Annexure-7) and summary of the order in Form GST DRC-07 dated 08.01.2021 passed in Reference No. ZD100121005040V (Annexure-7/1).

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 reasons sufficient 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. 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 to be ex parte in nature.

As such, we dispose of the present writ petition in the following mutually agreeable terms:

(a) We quash and set aside the impugned order dated 02.06.2022 passed by the Additional Commissioner of State Tax (Appeal), Tirhut Division, Muzaffarpur vide Memo No. 346 in Appeal Case No. AD1002210029403 for the period 2018-19 (Annexure-9); order dated 07.12.2020 passed by the Joint Commissioner of State Tax, West Circle, Muzaffarpur, (Annexure-7) and summary of the order in Form GST DRC-07 dated 08.01.2021 passed in Reference No. ZD100121005040V (Annexure-7/1);

(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 6th of September, 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. Also, he shall deal with all the materials, including tax invoices, documents etc. as also applicability of Section 16(2) of the BGST Act;

(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 stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	