IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11271 of 2022

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M/s G. Power Solution a Proprietorship Firm having its principal place of business at 1st Floor, 2, Madhuraj, Dr. R.K. Agrawal, Rajendra Path, Patna through its Authorized Signature namely Alok Kumar, aged about 47 years, Male, son of Shri Ram Rekha Thakur, resident of Dwarka Nagar, Muzaffarpur presently residing at 2, Madhuraj, Dr. R.K. Agrawal, Rajendra Path, P.S. Gandhi Maidan, District Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-cum-Commissioner, State Tax, Government of Bihar, Patna.
2. The Principal Secretary-cum-Commissioner, State Tax, Government of Bihar, Patna.
3. The Joint Commissioner of State Tax, Patna North Circle, Patna.
4. The Assistant Commissioner of State Tax, Patna North Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Mohit Agarwal, Advocate
Ms, Sushmita Mishra, Advocate
Mr. Lokesh Kumar, Advocate

For the Respondent/s : Mr.Vivek Prasad (G.P.7)

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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):-

(a) For quashing of the Order dated 17.03.2020 passed under Section 73(9) of Bihar GST Act, 2017 by the Respondent Assistant Commissioner of State Tax, Patna North Circle whereby the Input Tax Credit claimed by the petitioner for the period January 2018 to March 2018 was denied for having been claimed after expiry of due date under Section 16(4) of the Bihar GST Act, 2017 for having been passed without issuance of any show cause notice to the petitioner;

(b) For quashing of the consequential demand to the tune of Rs. 3,70,501/ issued in Form- GST-DRC-07 dated 17.03.2020;

(c) For a declaration that Section 16(4) of the Central Goods & Services Tax Act 2017 (hereinafter referred to as the central Act for short) as well as Bihar Goods & Services Tax Act 2017 (hereinafter referred to as the state Act for short) is ultra vires to the Article 265 of the Constitution of India;

(d) For a declaration that the provision of law prescribed under Section 16 (4) of both the central and state Act violates and defeats the very concept of indirect taxation which is the foundation of both the laws;

(e) For further holding and a declaration that the provision of law prescribed under Section 16 (4) of both the central and state Act have a direct consequence of subjecting the taxable person under the said central and state Act to direct taxation which in other words is a tax charged on the income of a person and as such is a complete departure from the very spirit, theme and object of both the laws legislated by the Parliament and the competent legislatures;

(f) For further holding and a declaration that the provision of law incorporated under Section 16 (4) of both the central and state Act creates a situation of double taxation of one particular transaction which is impermissible in terms of the provisions of both the central and state Act as double taxation has not been specifically prescribed anywhere under both the legislations;

(g) For further holding and a declaration that in absence of any restriction upon filing of returns for any part of the preceding financial year even after the month of September of the following financial year under the provisions of both the central and state Act the denial of input tax credit in terms of Section 16 (4) of both the Acts is ultra vires the meaning and purpose arising out of conjoined reading of Section 39 read with Section 47 read with Section 49 (2) of the central Act;

(h) In alternative for a declaration that the provision of law incorporated under Section 16 (4) of both the central and state Act has two parts one substantive with regard to grant of input tax credit i.e. set of with the tax paid at the earlier transaction and the procedural part of making claim of the input tax credit within certain prescribed time and therefore, the procedural part is directory and cannot defeat the substantive entitlement of input tax credit if it is shown that the Tax has been paid in the preceding transaction of sale or purchase; any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case.

Petitioner has prayed for quashing of the impugned order dated 17.03.2020 passed by the respondent Assistant Commissioner of State Tax, Patna North Circle, Patna under Section 73(9) of Bihar GST Act, 2017 for the F.Y. 2017-18 (Annexure-2) and Summary of the order in Form GST DRC-07 dated 17.03.2020 in Reference No.

ZA100320019174G (Annexure-3).

The order appear to be *ex parte* in nature.

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

(a) We quash and set aside the impugned order dated 17.03.2020 passed by the respondent Assistant Commissioner of State Tax, Patna North Circle, Patna under Section 73(9) of Bihar GST Act, 2017 for the F.Y. 2017-18 (Annexure-2) and Summary of the order in Form GST DRC-07 dated 17.03.2020 in Reference No. ZA100320019174G (Annexure-3);

(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 12th of September, 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 vires of Section 16(4) of GST Act by way of separate proceedings.

(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, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	