

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11384 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 Sri 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. Ananya Maitin, Advocate Ms. Priya Gupta, Advocate Mr. Lokesh Kumar, Advocate Ms. Sushmita Mishra, Advocate
For the Respondent/s	:	Mr. Vivke Prasad, GP-7

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-08-2022

Heard learned counsel for the parties.

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

- (a) For quashing of the Order dated 21.03.2020 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 April 2018 to March 2019 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. 20,16,316/ issued in Form- GST-DRC-07 dated 23.03.2020;
- (c) For quashing the impugned Form GST DRC -13 dated 22.02.2022 issued by the Respondent Department to the Banks wherein the direction was issued to freeze all the bank account of the Petitioner firm and its proprietor being operated in the said banks for recovery of impugned demand notice dated 23.03.2020, without issuing a copy to the Petitioner; 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 21.03.2020 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. 2018-19 (Annexure-2); Summary of the order in Form GST DRC-07 dated 23.03.2020 in Reference No.



ZA100320020654F (Annexure-3) and the notice to a third person under Section 79(1)(c) in Form GST DRC-13, issued by the Joint Commissioner of State Tax, Patna North Circle, Patna dated 22.02.2022 (Annexure-4).

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 21.03.2020 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. 2018-19 (Annexure-2); Summary of the order in Form GST DRC-07 dated 23.03.2020 in Reference No. ZA100320020654F (Annexure-3) and the notice to a third person under Section 79(1)(c) in Form GST DRC-13, issued by the Joint Commissioner of State Tax, Patna North Circle, Patna, dated 22.02.2022 (Annexure-4);

(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)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	18.08.2022
Transmission Date	

