IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11695 of 2022

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M/s. Livguard Energy Technologies Pvt. Ltd. A company registered under the provisions of the Companies Act, 1956, having its registered office at Plot No. 221, Ugyog Vihar Phase I, Gurfaon, Gurugram, Haryana and place of business at Plot No. 1254, Khata No. 575, Khesra No. 1249, Besides Mahabir Cancer Sansthan, Main Khagul Road, Phulwarisarif, Patna through its Authorizes Signatory, Subhrajit Ghosh, Male, Aged about 41 years son of Shri Sudhangshu Kumar Gosh, Resident of H. No. D- 758, Ground Floor, P.S.- Chittranjan Park, District- New Delhi.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-cum-Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Principal Secretary-cum-Commissioner, State Taxes, Government of Bihar, Patna.
3. The Joint Commissioner of State Taxes, Patliputra Circle, Commercial Tax Department, Bihar.
4. The Deputy Commissioner of State Taxes, Patliputra Circle, Commercial Tax Department, Bihar.
5. The Assistant Commissioner of State Taxes, Patliputra Circle, Commercial Tax Department, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.S.D. Sanjay, Sr. Advocate Ms. Priya Gupta, Advocate Mr. Anand Kumar, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (SC11)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-09-2022

Heard learned counsel for the parties.

Petitioner has prayed for following reliefs:-

(a) For quashing of the Order dated 24.02.2021 bearing Order No. ZD1002210126193 passed under Section 73 (1) of the Bihar GST Act, 2017 and also the Summary of Order (Demand Notice) issued in Form GST DRC-07 dated 24.02.2021 bearing reference No. ZD100221013015M passed by the Respondent Assistant Commissioner State Tax, Patliputra Circle, Patna for being in teeth of Principles of Natural Justice as the same was passed without considering the reply dated 21.02.2021 filled by the Petitioner to the Show Cause Notice dated 15.02.2021;

(b) For holding a declaration that the impugned order dated 24.02.2021 was passed in contravention to Section 75 (4) & (5) of the Bihar GST Act, 2017 as the Petitioner sought time till the submission of Annual Return in Form GSTR-09 for the Financial Year in question but the same was not accorded and the impugned order was passed without according an opportunity of hearing to the Petitioner;

(c) For issuance of direction upon the Respondents to give an opportunity of hearing to the Petitioner in terms of Section 75 (4) & (5) of the Bihar GST Act, 2017 and to pass a fresh order under Section 73 (1) of the Bihar GST Act, 2017 in accordance with law as the impugned order dated 24.02.2021 was passed without considering the reply dated 21.02.2021 filed by the Petitioner to the Show Cause Notice dated 15.02.2021;

(d) For issuance of direction upon the Respondents not to take any coercive steps for recovery of the demand raised vide Summary of Order issued in FORM GST DRC 07 dated 24.02.2021 bearing reference No. reference No. ZD100221013015M till fresh adjudication of the matter in issue; and for any other relief[s] for which the Petitioner may legally be found entitled to in the facts & circumstances of the present case.

It is brought to our notice that vide impugned order dated 24.02.2021 passed by the Respondent No. 5, namely, the Assistant Commissioner of State Taxes, Patliputra Circle, Commercial Tax Department, Bihar in Order No. ZD1002210126193 of BGST Act, 2017 and summary of order in Form GST DRC-07 dated 24.02.2021 (Ref. No. ZD100221013015M), for the tax period April 2019- March 2020, a demand of Rs.86,36,856/- has been raised.

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. 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 24.02.2021 passed by the Respondent No. 5, namely, the Assistant Commissioner of State Taxes, Patliputra Circle, Commercial Tax Department, Bihar in Order No. ZD1002210126193 of BGST Act, 2017 and summary of order in Form GST DRC-07 dated 24.02.2021 (Ref. No. ZD100221013015M) for the tax period April 2019-March 2020;

(b) The petitioner undertakes to deposit 20% 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 had already deposited up to the extent of twenty percent, the same shall be set off against the amount to be deposited. Also, if the deposit is found to be 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 30.09.2022 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) 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;

(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 assessment, 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 before this Court, 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 reasonable dispatch;

(q) We have not expressed any opinion on merits and all issues are left open;

(r) If possible, proceedings 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)

Sanjay/-Ranjan

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.09.2022
Transmission Date	NA