IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11820 of 2022

M/s Ahluwalia Contractors India having its Registered office at A- 177, Okhala Industrial Area, Phase- I, New Delhi and Regional Office at- International Convention Centre, ICCP, Near Magadh Mahila College, North Gandhi Maindan, Patna, Bihar- 800001 through its Authorized representative Mr. Ravi Raman Sinha.

... ... Petitioner/s

Versus

1. The Union of India through its Secretary and Commissioner, (GST), Ministry of Finance, Department of Revenue, having its office at Central Secretariat, North Block, New Delhi- 110001.
2. The Goods and Service Tax Network, through Chairperson having its registered office, 4th Floor, East Wing, World Mark- 1, Aero City, Indira Gandhi International Airport, New Delhi.
3. The State of Bihar through the Secretary cum- Commissioner, Commercial Tax Department, New Secretariat, Govt. of Bihar, Patna.
4. The Joint Commissioner of Commercial Taxes (GST), Special Circle, Gandhi Maidan, Patna.
5. The Assistant Commissioner of Commercial Taxes (GST) Special Circle, Gandhi Maidan, Patna.
6. The Additional Commissioner (Appeal) Central Division, Patna.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Anurag Saurav, Advocate
For the Respondent/s	:	Dr. K.N.Singh, A.S.G.
		Mr. Anshuman Singh, Sr. S.C. CGST & CX
For the State	:	Mr. Vikash Kumar, SC 11

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 24-08-2022

Heard learned counsel for the parties.

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

A) For quashing of order dated 19.06.2019 passed under section 73 of BGST Act 2017 by Respondent no. 5, whereby and whereunder the claim of petitioner of Rs. 32,29,195/- against State /UT Tax Credit carry forward in TRAN -1 under Rule 140(1) of BGST Act, 2017 has been rejected and the said order is an ex-parte order passed without providing any opportunity of hearing to the petitioner.

B) For quashing of demand notice in the Form of GST DRC 07 bearing Reference No. ZA100619000526X dated 19.06.2019 whereby and where under a demand of Rs. 43,75,560/- was made as tax, interest, penalty imposed vide order dated 19.06.2019 against the rejection of SGST TRAN-1 claim of the petitioner.

C) For quashing of order dated 05.12.2020 passed by Respondent no.6 in Appeal Case No. AD100819000188A (dated 01.07.2017 to 31.03.2018) whereby and where under the appellate authority has upheld the order dated 19.06.2019 after dismissing the appeal filed by the petitioner.

D) For issuance of an appropriate writ, order, direction to the show cause as to why the petitioner being the registered dealer within the meaning and ambit of Value Added Tax Act

2005 and Goods & Service Tax Act 2017, is not being allowed the Input Tax Credit against entry tax amount of Rs. 32,29,195/- available to it as on 27.12.2017.

E) For issuance of appropriate writ, order and direction including directing the respondent to allow the petitioner to refund of the credit available to it as on 27.12.2017, which has not been allowed it due to technical reason and a direction may be issued to considered the claim of Rs. 32,29,195/- as mention in TRAN - 1 as input tax credit.

F) For issuance of any other appropriate writ(s), order (s) or direction (s) as your lordship may deem fit and proper in the facts and circumstances of the case for doing justice.

It is brought to our notice that vide impugned order dated 05.12.2020 passed by the Respondent No. 6, namely, Additional Commissioner (Appeal), Central Division, Patna in Appeal Case No. AD100819000188A, the appeal of the petitioner against the order dated 19.06.2019 passed by the Respondent No. 5, namely, Assistant Commissioner of Commercial Taxes (GST) Special Circle, Gandhi Maidan, Patna and demand notice dated 19.06.2019 in Form GST DRC 07, has been rejected. The orders appeared 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 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 05.12.2020 passed by the Respondent No. 6, namely, Additional Commissioner (Appeal), Central Division, Patna in Appeal Case No. AD100819000188A, order dated 19.06.2019 passed by the Respondent No. 5, namely, Assistant Commissioner of Commercial Taxes (GST) Special Circle, Gandhi Maidan, Patna and demand notice dated 19.06.2019 in Form GST DRC 07;

(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 12.09.2022 at 10:30 A.M., if possible through digital mode;

(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) The Assessing Authority shall decide the case on merits after complying with the principles of natural justice;

(i) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

(j) During pendency of the case, no coercive steps shall be taken against the petitioner;

(k) The Assessing Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(l) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(m) 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;

(n) The Assessing Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

(o) Liberty reserved to the petitioner to challenge the order, if required and desired;

(p) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(q) 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;

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

(s) 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)

(Satyavrat Verma, J)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	26.08.2022
Transmission Date	