IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12364 of 2022

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Tata Consultancy Service Limited having its registered office at 214-216, Durga Ganesh Vedshree Arcade, Khesra, Mauja Durga, Budha Colony, Patna, Bihar-800 001, through its Authorized Signatory Mr. Vinod Mandlik, male, aged about 53 years, son of Shri Vasantrao Malik, resident of Mistry Complex, 603 Sankalp, J.B. Nagar, Andheri East, Mumbai 40059.

... ... Petitioner/s

Versus

1. State of Bihar through Principal Secretary cum Commissioner, Department of State Taxes, Govt. of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeals), Central Division, Patna.
3. Assistant Commissioner of State Taxes, Patlputra, Central Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjay Kumar Jha, Advocate Mr. Dharnendra Kr. Rana, Advocate Mr. Hrishikesh, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (S.C.11)

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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 the following relief(s):-

i. For issuance of a writ in the nature of Certiorari or an appropriate writ or order or direction to quash and set aside the Order-in-Appeal No. 671 dated 16.11.2021 passed by Respondent No. 2 and allow consequential relief in favor of the Petitioner;

ii. For issuance of a writ in the nature of Mandamus or an appropriate writ or order or direction commanding the respondents to re-credit or refund Rs. 25,16,215 (IGST of Rs. 1,90,553, CGST of Rs. 5,47,274 and SGST of Rs. 17,78,388) with interest debited on 24.02.2022 from Electronic Cash Ledger by Respondent No. 3 towards recovery pursuant to Order-in-Appeal No. 671 dated 16.11.2021 passed by Respondent No. 2;

iii. For granting interim stay of any further recovery in pursuance to Order-in-Appeal No. 671 dated 16.11.2021 passed by Respondent No. 2 during pendency of this writ petition;

iv. For allowing cost of litigation from the respondents;

v. For granting any other relief or reliefs for which the Petitioner may be found entitled in the facts and circumstances of this case as this Hon'ble Court may deem fit.

Petitioner has prayed for quashing of the order dated 24.02.2021 passed by the Assistant Commissioner of State Taxes, Patliputra, Central Bihar, Patna (Respondent No. 3) in Form GST DRC-07, Reference No. ZD100221013037G (Page-42, Annexure-3); Order dated 22.06.2021 passed by the Assistant Commissioner of State Taxes, Patliputra, Central Bihar, Patna (Respondent No. 3) in Reference No.

ZD100621001390E (page-45, Annexure- 5) and the order dated 16.11.2021 passed by the Additional Commissioner of State Taxes (Appeals), Central Division, Patna (Respondent No. 2), in Appeal Case No. AD1009210075987 (Page-93 Annexure-8).

We find that the orders have been passed without complying with the principles of natural justice.

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 order dated 24.02.2021 passed by the Assistant Commissioner of State Taxes, Patliputra, Central Bihar, Patna (Respondent No. 3) in Form GST DRC-07, Reference No. ZD100221013037G (Page-42, Annexure-3); Order dated 22.06.2021 passed by the Assistant Commissioner of State Taxes, Patliputra, Central Bihar, Patna (Respondent No. 3) in Reference No. ZD100621001390E (page-45, Annexure- 5) and the order dated 16.11.2021 passed by the Additional Commissioner of State Taxes (Appeals), Central Division, Patna (Respondent No. 2), in Appeal Case No. AD1009210075987 (Page-93 Annexure-8);

(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 10th of October, 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 personal hearing shall be afforded to the parties;

(I) Also, opportunity to place on record all essential documents and materials, if so required and desired, shall be afforded to the parties;

(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;

(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 be conducted through digital mode;

The instant petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, shall stand 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)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	