IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13502 of 2022

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M/s Gufic Biosciences Limited a Public Limited Company, registered under the Companies Act, 1956, having its registered office at 37, First Floor, Kamala Bhavan II, S.Nityanand Road, Andheri (East)- 400069 and Principal place of business at 1st Floor, Vikash Kunj, Main Road, Kankarbagh, Patna, through its authorised Signatory, namely Vinod Kumar Gupta, Aged about 64 years, Gender Male, Son of Late Rajesndra Kumar Sinha, Resident of A/11, Giriraj Apartment, Vivekanand Marg, North S.K. Puri, Opposite A.N. College, P.S. S.K.Puri, District Patna.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. The State of Bihar through the Principal Secretary-cum-Commissioner, State Tax, Government of Bihar, Patna.
3. The Principal Secretary-cum-Commissioner, State Tax, Government of Bihar, Patna.
4. The Additional Commissioner State Tax (Appeal), West Blok, Patna.
5. The Joint Commissioner of State Tax, Patna South Circle, Patna.
6. The Deputy Commissioner of State Tax, Patna South Circle, Patna.
7. The Assistant Commissioner of State Tax, Patna South Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Advocate Mr. Mohit Agarwal, Advocate Ms. Parul Prasad, Advocate Mr. Lokesh Kumar, Advocate Ms. Sushmita Mishra, Advocate
For the UOI	:	Mr. Anshuman Singh, Sr. SC, CGST
For the State	:	Mr. Vivek 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 : 12-10-2022

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

a) For quashing the Appellate Order dated 12.08.2022 passed in Appeal Case No. GST/PS-54/2022-23 issued vide Memo No. 1405 dated 12.08.2022 by the

Respondent No. 4 whereby the Appeal filed by the Petitioner Company was dismissed on the ground of limitation without considering the grounds on merit raised in the Appeal;

b) For quashing the Assessment Order passed under Section 73(9) of the Bihar Goods and Services Tax Act, 2017 dated 05.02.2021 by Respondent No. 6 vide Order No. ZD1002210050897 whereby ITC claimed by the Petitioner Company was rejected on the ground of mis-match of the entries in Form -GSTR-2A and Form GSTR-3B with respect to Financial Year 2019-20 without considering the reasons for mismatch of the same which was not deliberate rather in terms of law;

c) For a declaration that miss-match in the entries in GSTR-2A and GSTR-3B of the petitioner with respect to Financial Year 2019-20 was the amount of Input Tax Credit pertaining to the Financial Year 2018-19 which was claimed in September 2019 which is as per law and hence could not have been denied leading to imposition of tax, interest and penalty merely on ground of mismatch of GSTR-2A and GSTR-3B as in terms of BGST Act, Input Tax Credit can be claimed upto September of the ending year of the Financial Year i.e. September 2019 for Financial Year 2018-19;

d) For holding that the Respondent could not have recovered the entire impugned demand during the pendency of the appeal preferred U/S 107 of the Bihar GST Act, 2017 as the petitioner company had deposited 10% of the impugned demand at the time of filing of the appeal as provided under Section 107(7) of the Bihar GST Act, 2017; any other relief or reliefs to which the Petitioner is found entitled in the facts and circumstances of this case.

It is brought to our notice that vide impugned order dated 12.08.2022 passed by the Respondent No. 4 namely Additional Commissioner of State Taxs(Appeal), West Block, Patna in Appeal No. GST/PS-54/2022-2, the appeal of the petitioner against the order dated 06.02.2021 passed by the Respondent No. 6 namely the Deputy Commissioner of State Tax, Patna South Circle, Patna in ZD1002210050897, has been rejected on the ground of limitation.

It is stated across the bar that the entire amount as demanded by the Respondent Department stands deposited/recovered.

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 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 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 12.08.2022 passed by the Respondent No. 4 namely Additional Commissioner of State Taxs(Appeal), West Block, Patna in Appeal No. GST/PS-54/2022-2, and the order dated 06.02.2021 passed by the Respondent No. 6 namely the Deputy Commissioner of State Tax, Patna South Circle, Patna in ZD1002210050897;

(b) We accept the statement of the petitioner that the entire amount, as demanded by the respondents Department, stands deposited/recovered. 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) 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 02.11.2022 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 order, if required and desired;

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

(o) 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;

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

(q) 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)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	17.10.2022
Transmission Date	