IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14545 of 2022

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M/s Aaryan Advertising World (a Proprietorship Firm) through its Sole Proprietor Mr. Durga Prasad @ Durga Kumar, having office at - Vishwakarna Bhawan, Near Tapo Sthan Mandir, Karbhigahiya, District - Patna.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue, having its office at Room No. 46, North Block, P.O. and P.S. North Block, New Delhi - 110001.
2. The Central Board of Indirect Taxes and Customs, through its Chairman, Ministry of Finance, Department of Revenue, having its office at North Block, P.O. and P.S. North Block, New Delhi - 110001.
3. The Commissioner of Central Goods and Services Tax and Central Excise, Patna having its office at New Secretariat Patna Bihar.
4. Joint Commissioner of State Tax, South Circle, District Patna, Bihar.
5. Assistant Commissioner of State Tax, South Circle, District - Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Anurag Saurav, Advocate
For the Respondent/s	:	Mr.Anshuman Singh, SR. SC, CGST & CX
For the State	:	Mr. Vikash Kumar, Sc-11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-11-2022

Heard learned counsel for the parties.

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

i. For issuance of an appropriate writ/ order/ direction for declaring Section 16(4) of the Bihar/ Central Goods and Services Tax Act, 2017 as ultra vires, in as much as it seeks to improve a time limit for the availment of Input Tax Crediting being violative of Article

14, Article 19(1)(g) and Article 300A of the Constitution of India and also being violative of the basic structure of the Bihar/Central Goods and Services Tax Act, 2017.

ii. For issuance of an appropriate writ/ order/ direction for declaring the amendment carried under rule 61(5) of the Bihar/ Central Goods and Services Rules, 2017 inserted *vide* Clause 4(a) of Notification No. 49/2019 dated 9th October, 2019 issued by the respondent No. 2 Central Board of Indirect Taxes and Customs as ultra vires, under which GSTR-3B has been declared to be a valid return under Section 39 of the Central Goods and Services Act, 2017 with retrospective effect from 01.07.2017, as being wholly violative of Article 14, Article 19(1)(g) and Article 300A of the Constitution of India as it has an effect of interfering with the vested right of the petitioner to avail Input Tax Credit.

iii. For issuance of an appropriate writ/ order/ direction for quashing/ setting aside the order dated Order dated 22.11.2021 and DRC-07 dated 22.11.2021 issued by the Respondent No. 5 to the petitioner, under which the petitioner has been intimated for dis-allowance of Input Tax Credit and further imposing of tax (including penalty and interest) of an amount of Rs. 10,18,361/-- under SGST and *vide* order the amount so available in the Input Tax Credit ledger or the electronic credit ledger of the petitioner were stopped forthwith for discharge of any liability under Section 49 of the CGST/ BGST Act, 2017 or claim of refund of any un-utilized amount, as being contrary to the provisions of Rule 86(A) of the Central Goods and Services Rules Tax, 2017, as well as being arbitrary, unreasonable and against the scheme of the Central/ Bihar Goods and Services Tax Act, 2017, as the petitioner has rightly availed the Input Tax Credit form its electronic ledger:

iv. For releasing all of the Bank Account of the petitioner which as been attached by the respondent authorities.

v. For issuance of an appropriate Writ(s), order(s), and/or direction(s), as Your Lordships may deem fir and proper in the facts and circumstances of this case in the interest of justice.

It is brought to our notice that vide impugned order dated 22.11.2021 passed by the Respondent No. 5 namely the Assistant Commissioner of State Tax, Patna South Circle in GSTIN No. 10BBDPK3237J1Z2 and summary of order dated 22.11.2021 issued in Form GST DRC-07, petitioner was disallowed of Input Tax Credit and imposed tax, penalty and interest. Both the orders were ex parte in nature.

Learned counsel for the petitioner, by filing a supplementary affidavit dated 11.11.2022, states that petitioner had already deposited 50% of the tax amount and is also ready to deposit 10 per cent of the amount of the demand raised before the Assessing Officer.

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 and the limitation shall not be allowed to come in the way. 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; (c) 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 ex parte in nature.

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 orders 22.11.2021 passed by the Respondent No. 5 namely the Assistant Commissioner of State Tax, Patna South Circle in GSTIN No. 10BBDPK3237J1Z2 and summary of order dated 22.11.2021 issued in Form GST DRC-07;

(b) We accept the statement of the petitioner that he had already deposited 50 percent of the total tax amount and undertakes to deposit ten 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 30.11.2022 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)

(Partha Sarthy, J)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	14.11.2022
Transmission Date	