IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15294 of 2022

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M/s Planning and Infrastructural Development Consultants Pvt. Ltd. (PIDCPL) having its registered office at 102-103, Nirmala Niket, Jagdamba Path, North S.K. Puri, P.S.-S.K.Puri, Patna, Bihar-800013 represented through Authorized Representative Mr. Md. Faiyaz, Male, aged about 35 years.

... ... Petitioner/s

Versus

1. State of Bihar through Principal Secretary, Commercial Taxes Department, Govt. of Bihar.
2. Commissioner, Central GST and Central Excise, Patna-I, 3rd Floor, Central Revenue Building (Annexe), Birchand Patel Path, Patna-800001.
3. Additional Commissioner of State Tax (Appeal), Patna Central and West.
4. Joint Commissioner of State Tax, Patna Central Circle, Patna.
5. Assistant Commissioner, Central GST and Central Excise, Patna-1, 3rd Floor, Central Revenue Building (Annexe), Birchand Patel Path, Patna-800001.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dayanand Singh, Advocate
For UoI	:	Dr. K. N. Singh, ASG
		Dr. Anshuman Singh, Sr. SC, CGST & CX
		Mr. Devansh Shankar Singh, Advocate
		Mr. Sriram Krishna, Advocate
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 : 16-11-2022

Heard learned counsel for the parties.

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

I. For issuance of writ in the nature of certiorari or orders / directions to set aside the Order dated 25.02.2022 passed by the Respondent No. 3 whereby and whereunder the six appeals filed by the Petitioner against the order passed under Section 62 of The Central Goods and Services Tax Act, 2017 (hereinafter referred to as '**Act**') has been dismissed by a common order without proper appreciation of facts and materials available on record.

II. For issuance of writ in the nature of certiorari or orders / directions to set aside the Order of June 2019 dated 08.08.2019 bearing reference no. 4490, DRC-07 dated 04.10.2019 for the month of June, 2019 issued on the basis of Order dated 21.09.2019 bearing reference no. 7930, Order of July 2019 Dated 11.09.2019 bearing reference no. 5386, Order of August 2019 dated 11.10.2019 bearing reference no. 8402, Order of September 2019 dated 14.11.2019 bearing reference no. 10576, Order of October 2019 dated 17.12.2019 bearing reference no. 14406, Order of November 2019 dated 11.01.2020 bearing reference no. 15347 whereby and wherein the Respondent No. 4 has passed an order under Section 62 of the Act making an assessment on his best judgment, however, failed to take into consideration the relevant materials and made the assessment on pure guesswork and non-uniform parameters, rendering it bad in the eyes of law and contrary to the judicial pronouncements of the Hon'ble Apex Court.

III. For issuance of appropriate writ in the nature of certiorari or orders / directions to set aside the levy of penalty by the Respondents on the basis of assessment order passed by the Respondent under Section 62 of the Act.

IV. For issuance of writ in the nature of certiorari or orders / directions to stay the operation of aforementioned impugned Orders issued under the signature of Respondent No. 4 during the pendency of the instant application.

V. Any other appropriate writ or direction which may deem fit and proper including the cost.

It is brought to our notice that vide impugned order dated 25.02.2022 passed by the Respondent No. 3, namely, Additional Commissioner of State Taxes (Appeal), Patna Central and West in Appeal Case No.GST/PTC 33 of 2021-22, 34 of 2021-22, 35 of 2021-22, 36 of 2021-22, 37 of 2021-22 and 38 of 2021-22, the appeal of the petitioner against the orders dated 08.08.2019 (Reference No.4490), 11.09.2019 (Reference No.5386), 11.10.2019 (Reference No.8402), dated 14.11.2019 (Reference No. 10576), 17.12.2019 (Reference No.14406) and 11.01.2020 (Reference No.15347) passed by the Respondent No. 5, namely, Assistant Commissioner, Central GST and Central Excise, Patna-and the summary of order dated 04.10.2019 (Reference No.ZA10109000232L) issued 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 and 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 order dated 25.02.2022 passed by the Respondent No. 3, namely, Additional Commissioner of State Taxes (Appeal), Patna Central and West in Appeal Case No.GST/PTC 33 of 2021-22, 34 of 2021-22, 35 of 2021-22, 36 of 2021-22, 37 of 2021-22 and 38 of 2021-22, orders dated 08.08.2019 (Reference No.4490), 11.09.2019 (Reference No.5386), 11.10.2019 (Reference No.8402), dated 14.11.2019 (Reference No. 10576), 17.12.2019 (Reference No.14406) and 11.01.2020 (Reference No.15347) passed by the Respondent No. 5, namely, Assistant Commissioner, Central GST and Central Excise, Patna and summary of order dated 04.10.2019 (Reference No.ZA10109000232L) issued 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 29.11.2022 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 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 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 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)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	18/11/2022
Transmission Date	