

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21182 of 2021

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M/s Loha Construction Pvt. Ltd. having its registered office at Jamunia, Post-Sardiha, P.S. Simri Bakhtiyarpur, District- Saharsa through its Managing Director Mr. Laxman Kumar Singh (Male), aged about 31 years, Son of Shri Arbind Kumar Singh, Resident of Jamunia, Post- Sardiha, P.S. Simri Bakhtiyarpur, District- Saharsa, Bihar- 852127.

... .. Petitioner/s

Versus

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

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Jha, Advocate
For the Respondent/s : Mr.Lalit Kishore (AG)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/Hon'ble Judges through Video Conferencing from their residential offices/residences. Also the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 04-01-2022

Petitioner has prayed for the following relief(s):

“(i) For issuance of writ in the nature of Certiorari, for quashing of the communication in the form GST APL- 04 dated 18.08.2021 issued by the Respondent No. 2, whereby the appeal preferred by the Petitioner against the Order dated 21.01.2021 passed by the Respondent No. 3 under Section 74 of the Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as the BGST Act, 2017) has been rejected and a summary received demand



has been forwarded to the Petitioner.

ii. For issuance of a writ in the nature of certiorari for quashing of the order dated 21.01.2021 passed and issued by the Respondent No. 3, whereby duty demand of Rs. 6,36,335/- along with interest of Rs. 1,04,475/- has been demanded under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act, 2017) and penalty of Rs.6,36,335/- has been imposed under CGST Act, 2017 along with duty demand of Rs. 6,36,335/- and interest of Rs.1,04,475/- has been demanded under the BGST Act, 2017 and penalty of Rs.6,36,335/- has been imposed under BGST Act, 2017.

iii. For further restraining the respondents from making recovery of amount of tax, interest and penalty imposed and raised in terms of Order dated 21.01.2021 passed by the Respondent no. 3.

iv. For holding that the impugned order dated 18.08.2021 passed by the Respondent No. 2 is cryptic, non -speaking and in teeth of Section 107 of the BGST Act, 2017.

v. For any other relief or reliefs for which the Petitioner may be found entitled in the facts and circumstances of this case.”

It is brought to our notice that vide impugned order dated 18.08.2021 passed by the Respondent No. 2 namely the Assistant Commissioner of State Taxes (Appeal), Purnea Division, Purnea in Appeal Case No. (ARN) AD10032100397IV, the appeal of the petitioner against the order dated 21.01.2021 passed by the A.C.S.T., Saharsa Circle, Saharsa in Reference No. ZD100121018622C under Section 74 of BGST Act, 2017; has been rejected.

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 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. 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 18.08.2021 passed by the Respondent No. 2 namely the



Assistant Commissioner of State Taxes (Appeal), Purnea Division, Purnea in Appeal Case No. (ARN) AD10032100397IV and the order dated 21.01.2021 passed by the A.C.S.T., Saharsa Circle, Saharsa in Reference No. ZD100121018622C under Section 74 of BGST Act, 2017;

(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 28.01.2022 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 during the time of current Pandemic [Covid-19] be conducted through digital mode;

The instant petition stands 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)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.01.2022
Transmission Date	

