**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.15543 of 2022**

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M/s M/s CICO Patel JV (a joint venture Unit constituted by M/s Patel Engineering Limited, a company Incorporated under the Indian Companies Act, 1956 and M/s Chongqing International Construction Corporation, A company registered under Chineses Companies Act having its registered office at No. 40, Sixin Road, Yozong, District- Chinging, China having its Indian Office at 603, Shrikant Chamburs, Phase-1, 6th Floor Adjacent to R.K. Studio, Trombay Road, Chembur, Mumbai 400071, Maharashtra, and joint Venture Unit having its Local Office at behind, Indira Gandhi Institute of Medical Sciences, Sheikhpura, Patna 800014, duly represented through its Authorized Signatory, Mr. Vinay Mishra.

... ... 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 Commissioner of Central Goods and Services Tax and Central Excise, Patna having its office at New Secretariat Patna Bihar.
3. Joint Commissioner of State Tax, North Circle, Patna.
4. Assistant Commissioner of State Tax, North Circle, Patna.

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr.Anurag Saurav, Advocate |
| For the Respondent/s | : | Dr. K.N. Singh (ASG) |
| | | Mr. Vivek Prasad, GP 7 |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**
**and**
**HONOURABLE MR. JUSTICE PARTHA SARTHY**
**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 : 09-12-2022**

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

"(i) For Issuance of an appropriate writ/

order/ direction for setting aside order bearing reference no. ZD1012200204685 dated 10.02.2021 passed by Joint Commissioner of State Tax jurisdiction, North Circle, Patna, whereby and where under respondent authorities passed an expartee order dated 10.02.2021 without providing an opportunity of hearing to the petitioner whereby and where under respondent rejected the Input Tax Credit Claim by the petitioner in Form GSTR3B for the financial year 2018-19 on the ground that the claim made by the petitioner were not reflecting in the GSTR 2A and as per GSTR 2A Auto populated only an amount of Rs.99,60,555 were reflecting as ITC under CGST and BGST whereas petitioner had taken a claim of Rs.2,68,01,602 under CGST and BGST respectively and an amount of Rs.3,70,50,310/- was imposed as tax interest and penalty on the petitioner under section 73 (9) of BGST Act.

(ii) For setting aside order dated 10.02.2021 passed by Joint Commissioner of State Tax Jurisdiction, North Circle, Patna, has imposed an additional tax of an amount of Rs.3,70,50,310/- on the basis of presumption that the petitioner had not declared a lesser turn over against the payment received from their Employer, whereas as a matter of fact the IGIMS had deducted TDS from the Invoices of petitioner and hold part payment of the petitioner due to non removal of defect of certain previous work and due to non payment of part invoice amount in that period, petitioner could not declare the same in their return as Turn Over..

(iii) For setting aside the demand notice issued in the Form of DRC 07

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

It is brought to our notice that vide impugned ex parte order dated 10.02.2021, bearing Reference No. ZD1012200204685, passed by the Respondent No. 3, namely the Joint Commissioner of State Tax, North Circle, Patna, the input tax credit claim of the petitioner has been rejected and tax amounting to Rs. 3,70,50,310/-, including penalty and interest, has been imposed.

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 ex parte order dated 10.02.2021, bearing Reference No. ZD1012200204685, passed by the Respondent No. 3, namely the Joint Commissioner of State Tax, North Circle, Patna.

(b) The petitioner 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 09.01.2023 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)**

K.C.Jha/-

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| **Transmission Date** | |