

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16979 of 2022

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M/s Motiprabha Infratech Pvt. Ltd. Flat No. 502, Neuton Garden, Khajpura, Phulwari, Patna through its authorized signatory Jitendra Kumar Maurya (Male), aged about 26 years, S/o Jai Murat Maurya Residing Nibia Karma, PO-Semara Baraho, P.S.-Ahrura, District-Mirzapur, PIN-231001, State-Uttar Pradesh.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi-110001.
2. The Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi-110001.
3. The State of Bihar through the Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
4. The Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
5. The Additional Commissioner of State Taxes (Appeals), Central Division, Patna.
6. The Joint Commissioner of State Taxes, Patliputra Circle, Patna.
7. The Assistant Commissioner State Taxes, Patliputra Circle, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Madan Kumar, 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

Heard learned counsel for the parties.

The petitioner has prayed for the following relief/s :-

- (i) For issuing a writ of certiorari or any other appropriate writ quashing/ setting aside the assessment order dated 24.02.2021 (Annexure-P/1) passed by Respondent No. 7 for the F.Y 2018-19 whereby and whereunder the *ex-parte* assessment order has been passed for the aforesaid period and thereby a total liability of Rs. 97,73,967- (with breakup as – (a) IGST worth Rs.44,41,816/- with interest Rs.10,39,385/- (b) CGST worth Rs.17,10,193/-with interest Rs.436,190/- and SGST worth Rs.17,10,193/-with interest Rs.436,190/-), has been imposed on the petitioner;
- (ii) For issuing a writ of certiorari or any other appropriate writ quashing/ setting aside the demand issued in form DRC 07- order dated



24.02.2021 (Ref No. ZD100221013016K)
(Annexure - P/2) i.e. passed even before the
statutory notice period of 30 days as per section
73 (8) by Respondent No. 7 for the F.Y 2018-19
whereby and whereunder the *ex-parte* demand
order DRC 07 have been issued under Sec 73 (1)
of the CGST/BGST Rules, 2017 for the aforesaid
year. Through the said DRC-07 an *ex-parte*
demand has been raised for the aforesaid period a
total liability of 97,73,967/- (with breakup as – (a)
IGST worth Rs.44,41,816/- with interest
Rs.10,39,385/- (b) CGST worth Rs.17,10,193/-
with interest Rs.436,190/- and SGST worth
Rs.17,10,193/-with interest Rs.436,190/-), has
been imposed on the petitioner;

- (iii) For holding that the impugned assessment order
dated 24.01.2021 (Annexure-P/1) as also the
summary order and the demand DRC-07 dated
24.02.2021 are bad in law in as much as the
aforesaid orders have been issued in complete



violation to section 73 (8) of the GST Act which prescribes minimum 30 days notice time whereas in present case DRC-01 (Annexure-P/4) was issued on 15.02.2021 and merely after 9 days of issuance of such notice impugned assessment order dated 24.01.2021 has been issued.

- (iv) For issuing a writ of certiorari or any other appropriate writ quashing/ setting aside the Appellate order dated 28.09.2022 and APL-02 bearing No. ZD100922022326W dated 30.09.2022 (Annexure-P/3 Series) passed in Appeal Case No. AD100722002246T by Respondent No.5 for the F.Y - 2018-19 (01.04.2018 to 31.03.2019) whereby and whereunder the appellate authority i.e.

Respondent No.5 has rejected the appeal preferred by the petitioner on the ground of 'Delay/limitation of 15 days'.

- (v) For issuing a writ of mandamus or any other appropriate writ directing the Respondents not



take any coercive action including recovery from bank account and third parties until pendency of the present writ application;

- (vi) For issuing writ of mandamus and thereby directing the Respondents to refund a sum of Rs.7,86,222/- {Rs.4,44,182/-(IGST) Rs.171,020/- (CGST); Rs.171,020/- (SGST)} for F.Y – 2018-19, which was deposited by the petitioner as ten percent of disputed tax amount as needed to be paid as pre-deposit (Section 107(6)(b) of Central Goods and Service Tax Act, 2017) before filing an appeal under CGST/SGST for the aforesaid period i.e. F.Y-2018-19;
- (vii) For issuance of appropriate direction including the mandamus directing the respondents to pass fresh assessment order for the F.Y. 2018-19 upon considering the invoices available with the petitioner as also as on date mapping of GSTR-3B and GSTR-2A, GSTR-9 to ascertain the actual tax liability, if any on the petitioner for the period April 2018 to March 2019;
- (viii) For holding that the impugned assessment order dated 24.02.2021 (Annexure P/1) and the



appellate order dated 28.09.2022 (Annexure P/3 Series) have been issued in most illegal manner by Respondent No.7 and 5 without examining the records and without appreciating the supporting materials uploaded by the petitioner on its web-portal of GST; as also without delving into the merit of the case;

(ix) For holding that it was illegal on the part of Respondent No.7 without verifying the documents, giving proper opportunity of hearing enhanced tax liability up to 6 times on the basis of amount credit in GSTR – 7 i.e. TDS certificate issued by the customer.

(x) For holding that it was illegal on the part of Respondent No.7 to rejected the claim of Input and imposed interest worth Rs. 17,20,345/- for the difference of ITC in GSTR 3B vs GSTR 2A and

difference of Tax imposed on GSTR – 7 worth Rs. 191,520/- (Total interest Rs. 19,11,765/-) in view of the fact that for the amount of difference between GSTR-3B and GSTR-2A could have been justified if petitioner was given an opportunity of hearing by the assessing officer.

(xi) For passing any such other order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Undisputedly, minimum statutory period of 30 days mandated under the provisions of Section 74(A) of CGST/BGST



Act, 2017 was not afforded to the petitioner for making payment due and prior to the expiry of 30 days, the assessing officer proceeded to pass the order, ex parte in nature. The notice dated 15.02.2021 (Annexure-P/4 series) directed the petitioner to file reply on 21st of February, 2021 which was within the period of 30 days. It is the mandate of law that 30 days' period has to be afforded to the parties, which was not done in the instant case.

As such, on this ground alone, we quash the notice dated 15.02.2021 (Annexure-P/4 series) as also the order of assessment dated 24.02.2021 (Annexure-P/2) with the direction to the assessing officer to issue a fresh notice in the light of the statutory provisions and pass an appropriate order in accordance with law. All proceedings be positively complied with in these matters.

Petitioner undertakes to fully co-operate.

Petition stands allowed.

Interlocutory application, if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	13.12.2022
Transmission Date	

