IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17919 of 2022

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Aplendu Kumar son of Sri Gingal Singh, resident of Village Niyajpur, P.S. Fatwa, District- Patna, Bihar.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance (Department of Revenue), Government of India, New Delhi.
2. The Under Secretary, Ministry of Finance (Department of Revenue), Government of India, New Delhi.
3. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
4. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
5. The Joint Commissioner State Tax (J.C.S.T.) Patna East Division, Patna.
6. The Assistant Commissioner State Tax, Patna East Division, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Uday Prasad Singh, Advocate
For the UOI	:	Dr. K.N. Singh, Addl. SG
		Mr. Anshuman Singh, Sr. SG
For the State	:	Mr. Vivek Prasad, Advocate

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

Date : 10-01-2023

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

> "1. That the present writ application is for quashing of the Letters/demand Notices dated 16.08.2021 issued vide reference No. ZD100821007494U issued by Respondent No.6 as contained in Annexure-1 Series, by which the petitioner has been directed to pay Total CGST/SGST Tax amount of Rs. 1,77,282/- plus interest applicable as per under section 73(1) for

the period Financial Year 2020-21, which are not only illegal but arbitrary exercise by power vested to them as well as without any jurisdiction and beyond the terms and conditions mentioned in the respective Tenders/Bids/ Agreement,and also for quashing of order dt 14/10/22 passed in Appeal no ARN - AD101221003686R pleased to passed the impugned order in most arbitrary, unreasonable and malafide manner exceeding its jurisdiction wherein he has override the statue and in order to grant undue favour to provide revenue and has over looked even the order of apex court and Hon'ble court also The impugned order are unreasonable and has been passed in an utter violation of the principle of natural justice.

(i) for a declaration that section 16(4) of the central Goods and Services Tax Act, 2017thereinafter called the CGST Act) and section 16(4)of the Biler Goods and Services Tax Act. 2017(hereinafter called the BOAT Act) denying entitlement of input tax credit in respect of any invoice in debit note for supply of goods or services or bods after the due date of furnishing of the return under section 39 for the month of September following the end of the financial year to which sh invoice or debit note pertains of the relevant annul return in violative of Article 14 and 300A of the Constitution of India.

(ii) for a declaration section 1606) of the BST Act to the extent it seek to deny input tax credit if not taken within the due date of furnishing of the return for the month of September following the end of the financial year to which any invoice or debit note pertains or furnishing of annual retum, whichever is earlier is arbitrary and illegal.

(iii) for a declaration that the conditions as prescribed in section 16(4) of the CGST and BGSTAct are merely procedural in nature and cannot override the substantive conditions as mandated inspection 16(1) and section 16(2) of the said Acts

(iv) for a declaration that that in view of the non obstante clause present in section 16(2) of the CGST and BGST Act the same would prevail over section 16(4) of the said Acts

(v) for a declaration that GSTR-3B can not be said to be a return prescribed under section 39(1) of the CGST Act 2017 as it does not satisfy the parameters of the return contemplated under section 3910 of the said Act

(vi) for order Letters/demand Notices dated 16.08.2021 Letters/demand Notices dated 16.08.2021 issued vide reference No. ZD100821007494U issued by Respondent No.7and order dt 14/10/22 passed in Appeal no ARN - AD10221003686R rejecting the appeal be quashed.

It is brought to our notice that vide impugned order dated 14.10.2022 passed by the Additional Commissioner of State Taxes

(Appeals), Patna East Division, Patna in Appeal Case No. GST/PCE-14/2021-22, the appeal of the petitioner against the order dated 15.11.2021 passed by Respondent No. 6, namely The Assistant Commissioner of State Taxes, Patna East Division, Patna in Form GST DRC-07 for the period 2020-21, has been rejected on the ground of non-filing of the certified copy of the essential documents.

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 dated 14.10.2022 passed by the Additional Commissioner of State Taxes (Appeals), Patna East Division, Patna in Appeal Case No. GST/PCE-14/2021-22 and the order dated 15.11.2021 passed by Respondent No. 6, namely the Assistant Commissioner of State Taxes, Patna East Division, Patna in Form GST DRC-07 for the period 2020-21;

(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 25.01.2023 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)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	