IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15310 of 2022

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M/s MGCPL- SIL (JV) A Joint Venture having its one of the places of business at 2nd Floor 201, Rajendra Enclave, Exhibition Road, Behind Shashi Complex, Patna through its Authorized Signature Mukesh Kumar, Male, Aged about 43 years, Son of Late Saryug Sharan Sinha, Resident of Opposite XTTI Lane, Digha Ghat, P.S.- Digha, District-Patna.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. The State of Bihar through the Principal Secretary-cum-Commissioner, State Tax, Government of Bihar, Patna.
3. The Principal Secretary-cum-Commissioner, State Tax, Government of Bihar, Patna.
4. The Additional Commissioner, State Tax (Audit), Patna Central Division, Patna.
5. The Joint Commissioner, State Tax (Audit), Patna Central Division, Patna.
6. The Joint Commissioner of State Tax, Patliputra Circle, Patna.
7. The Assistant Commissioner of State Tax, Patliputra Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mohit Agarwal, Advocate
		Ms. Pooja Talwar, Advocate
		Mr. Lokesh Kumar, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, Advocate
For UOI	:	Mr. K.N. Singh, ASG
		Mr. Anshuman, Advocate
		Mr. Devansh Shankar Singh, Advocate

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

Date : 10-07-2024

1. The petitioner is aggrieved with the assessment

order passed for the year 2017-18 which is produced at Annexure-17. Annexure-17 is dated 20.09.2022 and the above writ petition was filed on 7.11.2022 within the appeal period.

2. Learned counsel appearing for the petitioner argues that the assessment is totally without jurisdiction and no opportunity for personal hearing was granted, thus making it vitiated on the ground of violation of principles of natural justice.

3. On the question of the order being without jurisdiction, it is contended that an audit was conducted and there was no objection taken to the Input Tax Credit (ITC) availed in the return; which is the issue on which an assessment has been passed, declining ITC and making a demand on that count. We do not think that merely because an audit was conducted and with respect to the objections raised therein, the petitioner had satisfied the liability as against the said objections, the petitioner would be absolved from any assessment or re-assessment by the jurisdictional Assessing Officer. The Assessing Officer is the statutory authority conferred with the power of assessment.

4. In the present case after the audit report at Annexure-12, the very same Officer, being the Additional

Commissioner of State Tax (Audit) issued a further notice dated 07.06.2022, produced at Annexure-13. Later to this, Annexure-15 Show Cause Notice under Section 73 was issued by the jurisdictional Assessing Officer; which was based on a scrutiny initiated on 11.08.2021, under Section 61 of the Act, pursuant to which the impugned order was passed. It is also stated in the counter affidavit that in the audit, the objection raised initially was on suppressed turnover, while the Assessing Officer has proceeded against the wrongful availment of ITC. We cannot find the order impugned to be without jurisdiction.

5. On the ground of no opportunity having been granted, the petitioner's counsel specifically refers to the supplementary counter affidavit filed as Annexure-P/19, which is downloaded from the portal of the Department. It is pointed out that it is specified in the said document that no personal hearing was granted, which substantiates the contention of the petitioner regarding violation of principles of natural justice.

6. Learned Government Advocate, however points out from the order itself that though show cause notice was issued, no reply was filed. Only if a reply is filed and a

personal hearing is sought, the department is obliged to grant such personal hearing. The petitioner's counsel has referred to Annexure-16 as the reply filed; which filing is not substantiated especially by producing a downloaded copy of the uploaded objection. It is also pertinent that there is no personal hearing sought for by the petitioner in Annexure-16; even if the contention of objection having been filed is accepted.

7. We do not find that the grounds raised by the petitioner are capable of being entertained under Article 226 of the Constitution of India. The input tax claim denied by the Assessing Officer has to be substantiated with reference to invoices; which factual determination cannot be in these proceedings.

8. However, we notice that the writ petition was filed within two months from the date of the original order. Section 107(4) provides for 3 months to file an appeal from the assessment order. In the said circumstances, we are of the opinion that if an appeal is filed within a period of one month from the date of uploading of this order, the matter will be considered on merits. We make it clear that we have not made any observation on the merits of the assessment which has to

be left to the Appellate Authority to consider.

9. The writ application stands dismissed with the above liberty.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Harsh/-

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	15.07.2024
Transmission Date	15.07.2024