

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15410 of 2022

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 Chinese Companies Act having its registered office at No. 40, Sixin Road, Yuzong, District-Chinging, China having its Indian Office at -603, Shrikant Chambers, 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

Appearance :

For the Petitioner/s	:	Mr. Anurag Saurav, Advocate
For the UOI	:	Dr. K.N. Singh, A.S.G.
		Mr. Anshuman Singh, Sr. SC CGST & CX
For the Respondent/s	:	Mr. Vivek Prasad, GP 7

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-11-2022

Heard learned counsel for the parties.



Petitioner has prayed for the following relief(s):

“(i) For issuance of an appropriate writ/order/direction for setting aside order bearing reference no. ZD10122000075954 dated 09.01.2021 passed by Joint Commissioner of State Tax jurisdiction, north Circle, Patna whereby and whereunder respondent authorities passed an ex parte order dated 09.01.2021 without providing an opportunity of hearing to the petitioner and raised a demand on the basis of excess TDS Credit in GSTR 2A of the petitioner’s employer namely IGIMS against the payment made to the petitioner in the period October 2019 to March 2019, Whereas the petitioner declared a lesser amount in their Turnover in the said period in their GSTR3B Returns and an amount of Rs. 97,02,298/- was imposed as tax interest and penalty on the petitioner under Section 73(9) of BGST Act.

(ii) For setting aside order dated 09.01.2021 passed by Joint Commissioner of State Tax Jurisdiction, North Circle, Patna, has imposed an additional tax of an amount of Rs. 97,02,298/- 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.”

This petition has been filed for quashing of order dated 09.01.2021 passed by the Respondent No. 3 namely the Joint Commissioner of State Taxes, North Circle, Patna GSTIN No. 10AABAC7054L1ZZ as also notice of demand dated 09.01.2021. Order passed is ex parte in nature.

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 order dated 09.01.2021 passed by the Respondent No. 3 namely the Joint Commissioner of State Taxes, North Circle, Patna in GSTIN No. 10AABAC7054L1ZZ and demand notice issued in Form DRC-07;

(b) The petitioner undertakes to deposit 20% of the amount of the demand raised before the Assessing Officer. This shall be done within eight 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 30.11.2022 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, the proceedings 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)

(Partha Sarthy, J)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	19.11.2022
Transmission Date	

