(2021) 07 PAT CK 0099

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12890 Of 2021

Cityneon Holding Ltd. APPELLANT

Vs

State Of Bihar RESPONDENT

Date of Decision : 29-07-2021

Acts Referred:

Citation : (2021) 07 PAT CK 0099

Hon'ble Judges : Sanjay Karol, CJ;S. Kumar, J

Bench : Division Bench

Advocate : Gautam Kumar Kejriwal, Abhay Kumar Singh, Prakash Chandra Agrawal, Alok Kumar Jha, Vikash Kumar

Final Decision : Disposed Of

Judgement

Petitioner has prayed for the following relief/s :-

a) For issuance of a writ in the nature of certiorari for quashing of the appellate order dated 11.02.2021 passed and issued vide memo number 163 by

the respondent number 2 whereby rejection of appeal preferred by the petitioner has been communicated for being in teeth of section 107 (12) of the

Bihar Goods And ServicesTax Act 2017;

b) For issuance of a writ in the nature of certiorari for quashing of the order dated 07.08.2019 passed by the respondent No. 3 under section 73 of the

Bihar Goods and Service Tax Act, 2017 (hereinafter referred to as the Bihar Act 2017 for short) and summary of order issued in form OST DRC - 07

dated 16.08.2019 by the respondent number 3 on grounds of the same being nonspeaking and in complete ignorance to the principle of law laid down

by a division bench of this honourable court in C.W.J.C. number 2125 of 2019 (Commercial Steel Engineering Corporation Versus The State Of Bihar

And Others):

c) For further holding and a declaration that once the figure of transitional credit claimed inadvertently by the petitioner which was not utilized at all

against output tax liabilities or any other mode of adjus1ment and was also reversed as and when the error was detected but definitely) before the

impugned order dated 07.08.2019 was passed by the respondent No. 3, no liability of tax, interest and penalty could be imposed as the petitioner did

not cause any loss to the revenue;

d) For issuance of an appropriate writ or order or direction restraining the respondent No. 3 from taking any coercive action agai nst the petitioner for

recovery of the amount of tax, interest and penalty during the pendency of the present writ application;

e) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case.

It is brought to our notice that vide impugned order dated 11.02.2021 passed by the Respondent No. 2 namely The Additional Commissioner of State

Taxes (Appeal), West Division Division, Patna in Appeal Case No. GST/ PTC-34/19-20 (ARN-AD101219001613R), the appeal of the petitioner

against the order dated 07.08.2019 passed by the Respondent No. 3 namely The Deputy Commissioner of State Taxes, Central Circle, Patna, in

GSTIN/ID-10AACAC3726G1ZE and Summary of Order in Form GST DRC-07 dated 16.08.2019 in Reference No. ZA100819000727N has been

rejected merely on the grounds of being barred by limitation. Both the orders were ex parte in nature.

In our considered view, the delay stands sufficiently explained on account of COVID restrictions.

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 order impugned order 11.02.2021 passed by the Respondent No. 2 namely The Additional Commissioner of

State Taxes (Appeal), West Division Division, Patna in Appeal Case No. GST/PTC-34/19-20 (ARN-AD101219001613R), the appeal of the petitioner

against the order dated 07.08.2019 passed by the Respondent No. 3 namely The Deputy Commissioner of State Taxes, Central Circle, Patna, in

GSTIN/ID-10AACAC3726G1ZE and Summary of Order in Form GST DRC-07 dated 16.08.2019 in Reference No. ZA100819000727N;

(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 petitionerâ??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 9th of September, 2021 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 during the time of current Pandemic [Covid-19] 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.

