IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5632 of 2021

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M/s Shivansh Enterprises having its office at Madhubani Bazar, Purnea, Bihar 854 301, through its Proprietor Priti Singh (Female), aged about 32 years, W/o Vivek Anand, R/o Niwash Shivnath Jevelars, Madhubhani Market, P.S.- K. Hat, P.O. Madhubani, Purnea, Bihar.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance Government of India, New Delhi.
2. The Principal Chief Commissioner of Central Tax, Bihar, Patna.
3. The Assistant Commissioner of Central Tax, Audit Circle, Kidwaipuri, Patna.
4. The Nodal Officer, (IT Grievance Redressal Mechanicsm), Central Goods and Service Tax, Purnea.
5. The State of Bihar through Commissioner-cum-Principal Secretary, Commercial Tax Department, Government of Bihar.
6. The Commissioner-cum-Principal Secretary, Commercial Tax Department, Government of Bihar.
7. Additional Commissioner of State Tax (Appeal), Purnea, Bihar.
8. Joint Commissioner of State Tax, Purnea Circle, Purnea, Bihar.
9. The Assistant Commissioner State Taxes, Purnea Circle, Purnea.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Brisketu Sharan Pandey, Advocate Mr. Abhishek Kumar, Advocate
For the UoI	:	Mr. (Dr.) K. N. Singh, ASG Mr. Anshuman Singh, Sr. SC, CGST
For the State	:	Mr. Vivek Prasad, GP-7

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-11-2021

Petitioner has prayed for the following relief(s):

a. For issuing writ/writs, order/orders including the writ of certiorari for quashing the summary order dated 25.02.2020, Demand and the Summary of Order (in issued in FORM GST DRC 07) dated 26.02.2020 issued for the tax period of April, 2018 wherein a demand of tax (Rs.641892/- as CGST and Rs.641892/- as SGST), interest (Rs.192568/- in CGST and Rs.192568/- in SGST) and penalty (Rs.64189/- in CGST and Rs.64189/- as SGST) for aforesaid tax period has been levied against the Petitioner.

b. For issuing writ/writs, order/orders including the writ of certiorari for quashing the order dated 25.02.2020, and the Summary of Order (demand notice in issued in FORM GST DRC 07) dated 26.02.2020 issued for the tax period of May, 2018 wherein a demand of tax (Rs.50,190/- as CGST and Rs.50,190/- as SGST), interest (Rs.15,057/- in CGST and Rs.15,057/- in SGST) and penalty (Rs.10,000/- in CGST and Rs.10,000/- as SGST) for aforesaid tax period has been levied against the Petitioner.

c. For issuing writ/writs, order/orders including the writ of certiorari for quashing the order dated 25.02.2020, and the Summary of Order (demand notice in issued in FORM GST DRC 07) dated 26.02.2020 issued for the tax period of November, 2018 wherein a demand of tax(Rs.11,70,646/- as CGST and Rs.11,70,646/- as SGST), interest (Rs.1,87,303/- in CGST and Rs.1,87,303/- in SGST) and penalty (Rs.1,17,065/- in CGST and Rs.1,17,065/- as SGST) for aforesaid tax period has been levied against the Petitioner.

d. For issuing writ/writs, order/orders including the writ of certiorari for quashing the order dated 25.02.2020, and the Summary of Order (demand notice in issued in FORM

GST DRC 07) dated 26.02.2020 issued for the tax period of December, 2018 wherein a demand of tax (Rs.1,12,413/- as CGST and Rs.1,12,413/- as SGST), interest (Rs.33,724/- in CGST and Rs.33,724/- in SGST) and penalty (Rs.33,724/- in CGST and Rs.33,724/- in SGST) for aforesaid tax period has been levied against the Petitioner.

e. For issuing writ/writs, order/orders including the writ of certiorari quashing all the four orders (i) dated 23.12.2020 bearing Memo No.257, (ii) dated 23.12.2020 bearing Memo No.254, (iii) dated 23.12.2020 bearing Memo No.256, and (iv) dated 23.12.2020 bearing Memo No.255 passed by Respondent No. 3 in appeal filed against assessment orders and the demand (DRC 07) issued for months April 2018, May 2018, November 2018 and December 2018 respectively, whereby the Appellate Authority i.e. Respondent No.3 has rejected the appeal preferred by the appellant challenging the demands of

Tax, interest and penalty for the month of April 2018, May 2018, November 2018 and December 2018.

f. For issuing a writ or order or direction in the nature of mandamus upon the respondents to grant one opportunity to the petitioner to upload declaration in from TRAN-1 filed under section 140 of the Central Goods And service Tax Act, 2017 (hereinafter referred to as the Act for short) which the petitioner could not do owing to human error and technical glitch.

g. For further issuing writ or order or direction in the nature of mandamus upon the respondents to enable the petitioner and facilitate uploading of declaration in form TRAN-2 in terms of rule 117 of the Central Goods And Service Tax Rules, 2017 (hereinafter referred to as the rules for short);

h. For issuing a writ or order or direction I the nature of mandamus further upon the respondents to process both the declarations in form TRAN-1 and TRAN-2 and facilitate extension of the related benefits of transitional credit to the petitioner in terms of section 140 of the act and rule 117 of the rules;

i. For further holding and a declaration that the provision of transitional credit made available under section 140 of the act is beneficial in nature and cannot be withdrawn for reasons of mere technicality and inadvertent human errors failing which the very purpose and object of such legislation would stand defeated.

j. For issuing writ/writs, order/orders including the writ of mandamus after remanding the case back to the assessing authority and directing him/her to assess the liability of the Petitioner afresh after considering the submissions and merits of the case.

k. For holding that the manner in which demand for tax, interest and penalty has been raised against the Petitioner is in violation of principles and Natural Justice.

l. For holding that the Respondent No. 3 erred in rejecting the appeal filed by the Petitioner only on the grounds of limitation during COVID 19 pandemic given the fact that during the aforesaid pandemic period Central Government has issued Notification No.35/2020 dated 03.04.2020, Notification No.55/2020 dated 27.06.2020, Notification No.65/2020 dated 01.09.2020 and Notification No.91/2020 dated 14.12.2020 have granted extension in the time limit for completion/compliance under the GST Act.

m. For holding that the rejection of appeal filed by the petitioner solely on the ground of delay as also on the ground of non-submission of hard copy of appeal in absolute ignorance to fact that there have been series of notifications granting extension to the time frame required for compliance/completion within the GST Act condoning all the instances of delay occurred during COVID 19 period.

n. For holding that serving notices in FORM GST DRC 01 and FORM GST DRC-01A only notionally to the email id of the accountant of the Petitioner and not sending it to the Petitioner through post has deprived the Petitioner to avail the statutory remedies and is in violation of principal of natural justice as well as statutory provisions of the GST Act and therefore such notices are invalid.

o. For holding that the imposition of liability of tax, interest and penalty on Petitioner by the Respondent is illegal and void.

p. For holding that the Respondents cannot impose any liability of interest as well as tax on the Petitioner when there has been no loss of revenue to the state.

q. For directing the Respondents not to take any coercive action against the Petitioner until the Pendency of the proceedings.

r. To pass any other order/orders which it may deem fit in the facts and circumstances of the case and within the ends of equity, justice and good conscience.

It is brought to our notice that vide impugned order dated 23.12.2020 passed by the Respondent No. 7 namely Additional Commissioner of State Tax (Appeal), Purnea, Bihar, in Appeal Case No. (ARN) AD100820000844P bearing Memo Nos.257, 254, 256 and 255, the appeal of the petitioner against the order dated 25.02.2020 passed by the Respondent No. 9, namely, the Assistant Commissioner State Taxes, Purnea Circle, Purnea, in GSTIN-10CAGPS4523Q1ZF (for the period December, 2018-19) and Summary of Order dated 26.02.2020 (in form GST DRC 07) in Reference No. ZA100220027084J, 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 dated 23.12.2020 passed by the Respondent No. 7 namely Additional Commissioner of State Tax (Appeal), Purnea, Bihar, in Appeal Case No. (ARN) AD100820000844P bearing Memo Nos.257, 254, 256 and 255 and the order dated 25.02.2020, passed by the Respondent No. 9, namely, the Assistant Commissioner State Taxes, Purnea Circle, Purnea, in GSTIN-10CAGPS4523Q1ZF (for the period December, 2018-19) and Summary of Order dated 26.02.2020 (in form GST DRC 07) in Reference No. ZA100220027084J**;**

(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 14.12.2021 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.

(Sanjay Karol, CJ)

(S. Kumar, J)

Ashwini/Sanjay

AFR/NAFR	
CAV DATE	
Uploading Date	02.12.2021
Transmission Date	