IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6052 of 2021

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Ajay Kumar Gupta, Son of Dinanath Sah, resident of Ward number 6, Baramdia, P.O. Baramania, Bara Chakia, East Champaran proprietor of M/s Rudra Enterprises having its office at Baramdia, P.O. Baramania, Bara Chakia, East Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeal), Tirhut Division, Muzaffarpur.
3. The Assistant Commissioner of State Taxes, Motihari Circle, East Champaran.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Gautam Kumar Kejriwal, Advocate Mr. Alok Kumar Jha, Advocate
For the Respondent/s	:	Mr. Dr. K.N. Singh, ASG Mr. Anshuman Singh, CGC Mr. Vikash Kumar, SC 11

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

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/Hon'ble Judges through Video Conferencing from their residential offices/residences. Also the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 24-06-2021

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 18.12.2020 issued vide form GST APL 02 by the respondent no. 3 whereby rejection of appeal preferred by the petitioner has been communicated and for a direction upon the respondent number 2 to consider the petitioner's appeal on merits and decide the same after awarding opportunity of hearing to the petitioner;

b) For further issuance of a writ in the nature of certiorari for quashing of the notice issued in form GST DRC- 13 vide memo number 240 dated 14.01.2021 issued by the respondent No. 3 which is violative of section 78 read with section 79 of the Central goods and Service Tax Act 2017 (hereinafter referred to as the act 2017 for short);

c) For holding and a declaration that the notice issued in form GST DRC-13 vide memo number 240 dated 14.01.2021 is premature and in teeth of section 78 as no such attachment of bank account could be made before expiration of 3 months of rejection of appeal and also when no reasons of urgency for such a drastic measure have been communicated to the petitioner in light of proviso to section 78 of the act 2017;

Or In The Alternative;

d) For issuance of a writ in the nature of certiorari for quashing of the order dated 03.03.2020 issued vide reference number ZA1003200019758 in form GST DRC-07 by the respondent number 3 and for a direction to award adequate opportunity of hearing to the petitioner and to take a fresh decision as regards the petitioner's entitlement to the input tax credit claimed for the period in question;

e) For holding and a declaration that the appeal preferred by the petitioner on 06.11.2020 is well within limitation prescribed under section 107 of the act 2017 in view of the order dated 30.04.2020 and 18.05.2020 passed in C.W.J.C, number 5633 of 2020 by full bench of this honourable court read with the order dated 23.03.2020 passed by honourable Supreme Court in Writ Petition (Civil) No. 3 of 2020:

f) For further holding and a declaration that the limitation prescribed under section 107 of the act 2017 can be extended under section 5 of the Limitation Act, 1963 and the provisions of the Limitation Act, 1963 shall apply with full force in view of section 29 (2) of the said act:

g) 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 18th of December, 2020 passed by Respondent No. 2 namely The Additional Commissioner of State Taxes (Appeal), Tirhut Division, Muzaffarpur in GSTIN/Temp ID/UIN 10BMPPG4940R1ZN [Reference No. ZD1012200181388] (Annexure-8), appeal preferred by the petitioner against the order dated 3rd of March, 2020 (Annexure-4) passed by the Respondent No. 3 namely The Assistant Commissioner of State

Taxes, Motihari Circle, East Champaran vide Reference No. ZA1003200019758 and Summary of order in Form GST DRC-07, stands dismissed merely on the ground of delay. 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, 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 18th of December, 2020 passed by Respondent No. 2 namely The Additional Commissioner of State Taxes (Appeal), Tirhut Division, Muzaffarpur in Form GST APL-02 vide GSTIN/Temp ID/UIN 10BMPPG4940R1ZN [Reference No. ZD1012200181388] (Annexure-8), as also the order dated 3rd of March, 2020 (Annexure-4) passed by the Respondent No. 3 namely The Assistant Commissioner of State Taxes, Motihari Circle, East Champaran vide Reference No. ZA1003200019758 and Summary of order in Form GST DRC-07;

(b) We accept the statement of the petitioner that 10 per cent of the total amount, being condition prerequisite for hearing of the appeal, already stands deposited;

(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) In this view of the matter, 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 Officer on 9th of August, 2021 at 10:30 A.M., if possible through digital mode;

(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) The Assessing Officer shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(i) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(j) The Assessing Officer shall decide the matter on merits expeditiously, preferably within a period of two months from the date of appearance of the petitioner;

(k) Liberty reserved to the petitioner to challenge the order, if required and desired;

(l) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(m) 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;

(n) We have not expressed any opinion on merits and all issues are left open;

(o) If possible, proceedings during the time of current Pandemic [Covid-19] be conducted through digital mode;

(p) All other prayers are left open to be adjudicated if the petitioner so desires, in an appropriate proceedings;

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)

K.C.Jha/PKP-

AFR/NAFR	
CAV DATE	
Uploading Date	07.07.2021
Transmission Date	