IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5715 of 2021

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M/S SAI NEXGEN COMPUCONS PVT. LTD. having its registered office at C/o Sarjan Singh Mungeriganj, Gandhi Ashram, Begusarai, Bihar through its authorized representative Amit Kumar

... ... Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Biha, Old Secretariat, Patna
2. Commissioner, Commercial Tax Department, Govt. of Bihar, New Secretariat, Patna
3. Additional Commissioner, Commercial Taxes (Appeal), Patna West Division, Patna
4. Joint Commissioner of Commercial Tax Gandhi Maidan Circle, Gandhi Maidan, Patna
5. Assistant Commissioner of Commercial Tax Gandhi Maidan Circle, Gandhi Maidan, Patna

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anurag Saurav, Advocate Mr. Priyajeet Pandey, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, S.C. 11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-06-2021

Petitioner has prayed for the following relief(s):

"i. For quashing order dated 17.06.2020 in Appeal no. GST/GM No. -77/19-20 (period 01.08.2019-31.08.2019) passed by Additional Commissioner, Commercial Taxes (Appeal), Patna West Division, Patna whereby and whereunder the Additional Commissioner (Appeal) dismissed the applicaton without condoning the delay in filing the appeal and without considering the fact that the copy of order dated 14.10.2019 was never communicated to the petitioner and while imposing the tax the authority not considered the correct transaction of the petitioner and tax had been imposed on basis of presumption.

ii. For quashing of order dated 14.10.2019 under section 62 of BGST Act, 2017 passed by Assistant Commissioner of Commercial Taxes, Gandhi Maidan Circle, Patna and as well as demand notice dated 18.10.2019 issued by Assistant Commissioner, Gandhi Maidan Circle, Patna whereby and whereunder a tax of Rs. 3,47,236.00/- which includes CGST and SGST of Rs. 1,71,052.63(each) and interest of Rs. 2565.79(each) respectively has been imposed, and the aforesaid order has been passed without considering the fact tht the communication of order dated 14.10.2019 was not made to the petitioner and without considering the fact that the petitioner had less tax liability and transaction in the month of 2019.

iii. For restraining the respondent authorities from recovery of tax amount from the petitioner during the pendency of writ application.

iv. For any other relief or reliefs which may the petitioner is entitled in the eye of law."

It is brought to our notice that vide impugned order dated 17th of June, 2020 passed by the Additional Commissioner, Commercial Taxes (Appeal), Patna, West Division, Patna in Appeal Case No. GST/GM-77/19-20, the appeal of the petitioner against the order dated 14.10.2019 passed by the Assistant Commissioner of Commercial Tax, Gandhi Maidan Circle, Gandhi Maidan, Patna, in GSTIN-10AAMCS9135P1ZD and Summary of Order in Form GST DRC-07 dated 18th of October, 2019 in

Reference No. ZA101019002731B 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 17th of June, 2020 passed by the Additional Commissioner, Commercial Taxes (Appeal), Patna, West Division, Patna in Appeal Case No. GST/GM-77/19-20, the order dated 14.10.2019 passed by the Assistant Commissioner of Commercial Tax, Gandhi Maidan Circle, Gandhi Maidan, Patna, in GSTIN-10AAMCS9135P1ZU and the Summary of Order dated 18th of October, 2019 in Reference No. ZA101019002731B;

(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 9th of August, 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) 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, 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)

Sujit/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	07.07.2021
Transmission Date	