

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7169 of 2021

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M/s Shree Bhuneshwari Pharma a Proprietorship Firm having its Place of Business Swaraj Path Tilak Nagar, Kankarbagh, P.S.Patrakar Nagar, Patna-800020 through its Proprietor namely Rajive Ranjan Prasad male aged about 48 Years Son of Late Krishna Mohan Prasad Resident of Flat No. E/IE, Pusp Vihar Apartment, Exhibition Road, Patna-800001.

... .. 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), Patna West Division, Patna.
3. The Joint Commissioner of State Taxes, Patna South Circle, Patna.

... .. 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. 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)

(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 15.01.2021 issued vide form GST APL-02 by the respondent no. 2 whereby rejection



of appeal preferred by the petitioner has been communicated;

- b) For issuance of a writ in the nature of certiorari for quashing of the order dated 24.08.2019 passed by the respondent No. 3 under section 61, 73 and 50 of the Bihar Goods and Service Tax Act, 2017 (hereinafter referred to as the Bihar Act 2017 for short) read with section 20 of the Integrated Goods and Service Tax Act, 2017 (hereinafter referred to as the Integrated Act, 2017 for short) and summary of order issued vide reference number ZA I00819002462X in form GST DRC -07 dated 29.08.2019 by the respondent number 3 on grounds of the same being violative of the principles of natural justice and also without jurisdiction;
- c) For holding and a declaration that the appeal preferred by the petitioner on 31.12.2020 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:
- d) For further holding and a declaration that the limitation prescribed under section 107 of the Bihar 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;

- 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 15th of January, 2021 passed by the Respondent No. 2 namely the Additional Commissioner of State Taxes (Appeal), Patna West Division, Patna issued vide form GST APL-02, the appeal of the petitioner against the order dated 24.08.2019 passed by the Respondent No. 3, namely the Joint Commissioner of State Taxes, Patna South Circle, Patna in GSTIN 10AGTPP3363Q2ZQ, under Section 61, 73 and 50 of Bihar Goods and Service Tax Act, 2017 ; passed in Reference No. ZA100819002462X, and summary of order in Form GST DRC-07 dated 29.08.2019, for the tax period April 2018-December, 2019 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 15th of January, 2021 passed by the Respondent No. 2 namely the Additional Commissioner of State Taxes (Appeal), Patna West Division, Patna issued vide form GST



APL-02; the order dated 24.08.2019 passed by the Respondent No. 3, namely the Joint Commissioner of State Taxes, Patna South Circle, Patna in GSTIN 10AGTPP3363Q2ZQ, under Section 61, 73 and 50 of Bihar Goods and Service Tax Act, 2017 ; and summary of order in Form GST DRC-07 dated 29.08.2019, for the tax period April 2018-December, 2019;

(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 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)

(S. Kumar, J)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	07.07.2021
Transmission Date	

