IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6717 of 2021

Sushant Kumar, son of Late Darogi Rajak resident of 204, Jagriti Apartment, South of Shiv Mandir, Ram Nagri, Ashiyana Nagar, District- Patna

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Rural Work Department, Bihar, Patna
2. The Executive Engineer, Rural Work Department, Work Division Araria, District- Araria
3. The Assistant Commissioner of State Tax Patna Central, Patna West, Bihar.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Raju Prasad, Advocate
For the Respondent/s	:	Mr. Vivek Prasad, GP 7

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):

> "i. For issuance of the appropriate writ/ writs/ direction/directions/ order/orders Commanding the Bihar State respondents to pay the amount of BGST/ CGST with interest and Penalty worth Rs. 744357.34, which has been demanded by the Respondent No.-3 and gst tax,interest in the financial year

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2019-2020 an amount of bil1 of RS 4185568 and RS 1963952, Bill number 1020, Dated 10/07/2020 serial number 1 and 2, Asst. Commissioner of State Tax Patna Central, Patna West, Bihar from the petitioner accrued on the Part amount of bill as Rs.3167478.00 obtained by the petitioner from the office of State Respondents being Executive Engineer Rural Work Dept. work Division Araria, in 1ieu of work done following to the Agreement No.46 SBD MMGSY-2016-17 and agreement number 47 S.B.D MMGSY 2016-17 for construction of the Road, which was assessed in the Financial year 2018-2019, 2019-2020.

ii. For issuance of the appropriate order for quashing of 1etter contained in Reference No. 2A100220018592D dated 29.01.2020 (Annexure-2/1) issued by the Commissioner of State Tax, Patna Central, Patna West, Bihar whereby and where under demand of Rs.744357.34 as a BGST/ CGST (Tax) has been made from the petitioner from retrospective effect upon part amount of bil1 as Ra.3167478 as described above accrued in Financial year 2018-19 for the Assessment Year 2019-20.

iii For issuance of such Writ/writs/ direction/ directions/ order/orders as your lordship may deem fit and proper.

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It is brought to our notice that vide impugned letter contained in Reference No. ZA100220018592D dated 29.01.2020 (Annexure-2/1) issued by the Respondent No. 3 namely the Assistant Commissioner of State Tax, Patna Central, Patna West, Bihar under Section 74(1) of Bihar Goods and Service Tax Act, 2017 whereby a demand of Rs.744357.34 as a BGST/CGST (Tax) has been made from the petitioner from retrospective effect upon part amount of Bill of Rs. 3167478 in Financial Year 2018-19 for the assessment year 2019-20.

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,

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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 letter contained in Reference No. ZA100220018592D dated 29.01.2020 (Annexure-2/1) issued by the Respondent No. 3 namely the Assistant Commissioner of State Tax, Patna Central, Patna West, Bihar under Section 74(1) of Bihar Goods and Service Tax Act, 2017;

(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

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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.

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(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

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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)

K.C.Jha/-

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CAV DATE	
Uploading Date	07.07.2021
Transmission Date	

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