IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6876 of 2021

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Sanjeev Kishore Son of Late nand Kishore Choudhary Resident of Rajeev Sadan, Ford Company Chowk, Police Station- K. Hat, District- Purnea, the proprietor of Nandraj Fuels, having its office and place of business at Ford Company Chowk, Police Station- K.Hat, District- Purnea

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue, having its office at Room No. 46, North Block, New Delhi
2. The Central Board of Indirect Taxes and Customs through its Chairman, Ministry of Finance, Department of Revenue, having its office at Room No. 46, North Block, New Delhi
3. The state of Bihar through the Secretary-cum-Commissioner of State Tax, Bihar having its office at Vikas Bhawan, Bailey Road, Patna
4. The Additional Commissioner of State Taxes (Appeal) Purnea, Bihar
5. The Assistant Commissioner of State Tax Purnea Circle, Bihar

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Parijat Saurav, Advocate
For the Union of India : Dr. K.N.Singh, A.S.G.
Mr. Anshuman Singh, Sr. S.C., CGST & CX

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

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(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 : 30-06-2021

Petitioner has prayed for the following relief(s):

> i) For issuance of a writ in the nature of Certiorari or any other appropriate writ or order for quashing of order-in-appeal dated 12/12/2020 passed by the respondent no.4,

the Additional Commissioner of State Taxes (Appeal), Purnea, Bihar, whereby the appeal of the petitioner was dismissed only on the ground of "delay in submission of Appeal", and further be pleased to quash the assessment order-in-original contained in Ref. No. ZA100320004873B dated 05/03/2020 passed under the signature of respondent no.5 and the consequential demand notice contained in Form GST DRC- 07 dated 05/03/2020 levying tax amounting to Rs. 10,49,285.46/- (Rs. Ten lac, forty nine thousand, two hundred and eighty five and forty six paise ony) alongwith interest of Rs.73,449.84/- (Rs. Seventy three thousand, four hundred and forty nine and eighty four paise only) and penalty of Rs.2,40,000/- (Rs. Two lacs and forty thousand only), totalling to Rs.13,62,735.29/- (Rs. Thirteen lacs, sixty two thousand, seven hundred thirty and twenty nine paise only) for the period April 2018 to March 2019-Financial Year 2018-19.

ii) For issuance of an appropriate writ, order or direction for holding and declaring the Section 16(4) of the Central/Bihar Goods and Service Act, 2017 as *ultra vires* the provisions of Article 14, 19(1)(g) and 300A of the Constitution of India and also being violative of Section 16(1) and (2) and the basic structure of CGST/BGST Act, 2017.

iii) For issuance of an appropriate writ, order or directioin for holding and declaring the Rule 61(5) of the Central/Bihar Goods and Service Rules, 2017 as amended by notification no. 49/2019 with retrospective date of 01.07.2017, as ultra vires the provisions of Article 14, 19(1) (g) and 300A of the Constitution of India and also being violative of Section 16(1) and (2) and the basic structure of CGST/BGST Act, 2017.

iv) In alternate be pleased to hold and declare that Section 16(4) of the cgst/bgst Act, 2017 and amended Rule 61(5) of the CGST/BGST Rule, 2017 are not applicable in the case of the petitioner.

v) Be pleased to remand the appeal of the petitioner to respondent no.5, the Additional Commissioner of State Taxes (Appeal), Purnea, Bihar to decide the appeal of the petitioner on merits, after quashing the order-in-appeal dated 12/12/2020 passed by the respondent no.5.

vi) Be pleased to stay the operation of the demand notice contained in Form GST DRC-07 dated 05/03/2020 levying tax amounting to Rs.10,49,285.46/- (Rs. Ten lac, forty nine thousand, two hundred and eighty fiv e andn forty six paise ony) along with interest of Rs.73,449.84/- (Rs. Seventy three thousand, four hundred and forty nine and eighty four paise only) and penalty of Rs. 2,40,000/- (Rs. Two lacs and forty thousand only), totalling to Rs.13,62,735.29/- (Rs Thirteen lacs, sixty two thousand, seven hundred thirty five and twenty nine paise only), during the pendency of the present writ application.

Vii) For issuance of any other appropriate writ, order or direction which Your Lordships may deem fit and proper in the facts and circumstances of the case."

The petitioner has prayed for quashing of the order dated 05.03.2020 passed in Ref. No. ZA100320004873B by the Respondent No.5, the Assistant Commissioner of State Tax, Purnea, consequential demand of notice in Form GST DRC-07 dated 05.03.2020 and order dated 12.12.2020 passed by the Respondent No. 4, namely the Additional Commissioner of State Tax (Appeal), Purnea Division, whereby the appeal of the petitioner has been rejected merely on the grounds of being barred by limitation.

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 order dated 05.03.2020 passed in Ref. No. ZA100320004873B by the Respondent No.5, the Assistant Commissioner of State Tax, Purnea, consequential demand of notice in Form GST DRC-07 dated 05.03.2020 and order dated 12.12.2020 passed by the Respondent No. 4, namely the Additional Commissioner of State Tax (Appeal), Purnea Division;

(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)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	