

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7149 of 2021

=====

M/s Bindeshwari Chaurasia a Proprietorship firm having its Office at Mohanpur, New Punaichak, Patna-800001, through its Proprietorship Bindeshwari Chaurasiya, Son of Singeshwar Raut, Resident of Village-Pariharpur, P.S.-Pariharpur, District-Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through, The Commissioner, State Taxes, Government of Bihar, Patna.
2. The Joint Commissioner, Appeal State Taxes, Patna Circle, Patna.
3. The Dy Commissioner, State Taxes, Patna Central Circle, Patna.
4. The Assistant Commissioner, State Taxes, Patna Central Circle, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Akash Chaturvedi, Advocate
For the Respondent/s : Mr. Pawan Kumar, AC to AG

=====

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 : 30-06-2021

Petitioner has prayed for the following relief(s):

- I. For issuance of writ in the nature of the nature of dated certiorari for quashing of order dated 15.01.2021 passed by the Joint Commissioner,



(Appeal) State Taxes, Patna Central Circle, Patna whereby the appeal been preferred by the petitioner has dismissed merely on the ground of delay in submission of appeal as merit of the impugned order was totally overlooked nor considered by the appellate authority.

- II. For issuance of writ in the nature of of mandamus directing the respondents to considered the appeal filed by the petitioner against the order of assessment made by the Assistant Commissioner State Taxes after hearing the petitioner and considering the submission the appeal of the petitioner may be disposed of.
- III. To any other relief/s to which the petitioner is found entitled to in facts and circumstances of the present case.

It is brought to our notice that vide impugned order dated 15th of January, 2021 passed by the Respondent No. 2 namely the Joint Commissioner, Appeal State Taxes, Patna Circle, Patna in FORM GST APL-02 against the order of assessment passed by Respondent No. 4, namely Assistant Commissioner, State Taxes, Patna Circle, Patna, whereby the appeal of the petitioner has been rejected on the ground of appeal being barred by limitation.

Learned counsel for the Revenue, states that he has no objection if the matter is remanded to the Appellate 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 Joint Commissioner, Appeal State Taxes, Patna Circle,



Patna in FORM GST APL-02;

(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	

