IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8427 of 2021

Shankar Singh S/o Hariwansh Narayan Singh R/o House No. 88, Gandhi Nagar, Boring Road, Near Shiv Kunj Apartment, P.O. - G.P.O., District- Patna, Proprietor at M/s Shivam construction having its office at House No. 88, Gandhi Nagar, Boring Road, Near Shiv Kunj Apartment, P.O. -G.P.O., District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar, through the Commissioner - cum - Principal Secretary, Commercial Tax Department, Government of Bihar, Patna.
2. The Commisioner - cum - Principal Secretary, Commercial Tax Department, Government of Bihar, Patna.
3. The Additional Commissioner of State Tax (Appeal), Patna West Division, Patna.
4. The Assistant Commissioner of State Tax, Patna Central, Patna West, Bihar.

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr.Kaushal Kishore Mishra, Advocate

For the Respondent/s : Mr. Vikash Kumar, SC-11

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

Date : 22-07-2021

Petitioner has prayed for the following relief(s):

i) To issue an appropriate order/direction in the nature of *Certiorari* quashing the Demand Order dated 13.03.2020 bearing Reference No. ZA100320016535D whereby the Respondent Authority has arbitrarily directed the Petitioner to pay Goods and Services Tax on the Total amount received (Total Outward Supply + GST) which is already inclusive of Goods and Services Tax;

ii) To issue an appropriate order/direction in the nature of *Certiorari* quashing the Appeal rejection order dated 23.01.2021 bearing reference No. ZD100121020393F whereby the Respondent Authority has rejected the Appeal of the Petitioner without granting an opportunity of hearing to the Petitioner;

iii) To issue an appropriate order/direction in the nature of *Mandamus* directing the Respondent Authorities to grant an opportunity of hearing to the Petitioner to present his case before the Appropriate Authority;

iv) To issue an appropriate order/direction in the nature of *Mandamus* directing the Respondent Authorities not to take any coercive action against the Petitioner until the disposal of this writ petition;

v) To pass any other order or orders for which the Petitioners maybe found entitled to in the facts and circumstances of this case;

vi) Or may pass any other suitable order/orders which your Lordships may deem fit and proper in facts and circumstances of this case.

It is brought to our notice that vide impugned order dated 23rd of January 2021 passed by the Respondent No.3 namely The Additional Commissioner of State Tax (Appeal), Patna West Division, Patna passed in Form GST APL-02 vide Reference No. ZD100121020393F, the appeal of the petitioner against the demand order dated 13.03.2020 issued vide

Reference No.ZA100320016535D by the Respondent No. 4 namely The Assistant Commissioner of State Tax, Patna Central, Patna West, 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 23rd of January 2021 passed by the Respondent No.3 namely The Additional Commissioner of State Tax (Appeal), Patna West Division, Patna, in Form GST APL-02 vide Reference No. ZD100121020393F and the demand order dated 13.03.2020 issued vide Reference No.ZA100320016535D by the Respondent No. 4 namely The Assistant Commissioner of State Tax, Patna Central, Patna West**;**

(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 3rd of September, 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) The Assessing Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

(n) Liberty reserved to the petitioner to challenge the order, if required and desired;

(o) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(p) 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;

(q) We have not expressed any opinion on merits and all issues are left open;

(r) 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)

Ashwini/Sujit/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	