IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7609 of 2021

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Juno Bitumix Private Limited, a company incorporated under the Companies Act 1956 having its office at A-3, 2nd Floor, Luv Kush Tower, Exhibition Road, Patna through its Manager, Prabhat Ranjan Jha (Male), (aged about 41 years), Son of Shri Satya Narayan Jha, Resident of Village Amanpur, Post Charaut, Charaut, P.S. Charaut, Sitamarhi, Bihar.

... ... Petitioner/s

Versus

1. State of Bihar through the Commissioner of State Tax, having its office at Vikas Bhawan, Bailey Road, Patna.
2. Addl. Commissioner of State Tax (Appeal), Central Division, Patna, Bihar.
3. Deputy Commissioner of State Tax, Special Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.D.V.Pathy, Advocate Mr. Sadashiv Tiwari, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC 11

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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 : 30-06-2021

Petitioner has prayed for the following relief(s):

"i) the order dated 28.08.2019 (as contained in Annexure -3) for the period April 2019 passed by the respondent no. 3 under section 62 of the Bihar Goods and Services Tax Act, 2017 (hereinafter called the BGST Act) without service of notice under section 46 of the BGST Act the quashed.

ii) the summary of order dated 28.08.2019 (as contained in Annexure -2) for the tax period April 2019 passed by the respondent no. 3 in Form GST DRC 07 without service of notice under section 46 of the BGST Act the quashed.

iii) the order dated 04.09.2020 (as contained in Annexure -6) for the tax period April 2019 passed by the respondent no. 2 dismissing the appeal on the solitary ground of delay in filing of the appeal be quashed.

iv) For granting any other relief(s) to which the petitioner is otherwise found entitled to."

It is brought to our notice that vide impugned order dated 04.09.2020 passed by the Respondent No. 2 namely the Additional Commissioner of State Tax (Appeal), Central Division, Patna, Bihar in Appeal Case No. AD10082404215, the appeal of the petitioner against the order dated 28.08.2019 passed by Respondent No. 3, namely Deputy Commissioner of State Tax, Special Circle, Patna in GSTIN 10AACCJ1657K1ZS, under Section 62 of Bihar Goods and Service Tax Act, 2017; and summary of order in Form GST DRC-07 dated 28.08.2019, for the tax period April 2019 in Form GST DRC-07, 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 04.09.2020 passed by the Respondent No. 2 namely the Additional Commissioner of State Tax (Appeal), Central Division, Patna, Bihar in Appeal Case No. AD10082404215, the appeal of the petitioner against the order dated 28.08.2019 passed by Respondent No. 3, namely Deputy Commissioner of State Tax, Special Circle, Patna in GSTIN 10AACCJ1657K1ZS, under Section 62 of Bihar Goods and Service Tax Act, 2017; and summary of order in Form GST DRC-07 dated 28.08.2019, for the tax period April 2019 in Form GST DRC-07;

(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)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	07.07.2021
Transmission Date	