IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 8214 of 2021

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M/s Manikant Singh a partnership firm having its place of business at 5, 31, JP Nagar, Behind Circuit House, Purnea - 854301 Through one of its partner namely Kumar Sanjiv male aged about 50 Years son of Manikant Singh resident of JP Nagar, Behind Circuit House, Purnea - 854301. ....Petitioner

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeal) Purnea Division, Purnea.
3. The Joint Commissioner Of State Taxes, Purnea Circle, Purnea.

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate Mr. Alok Kumar Jha, Advocate
For the Respondent/s	:	Mr. Pawan Kumar, A.C. to A.G.
For the Union of India	:	Dr. K.N. Singh, ASG Mr. Anshuman Singh, Advocate

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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 : 01-07-2021

Our attention is invited to the Circular dated 11th of August, 2020, issued by the Government of India, Ministry of Finance, Department of Revenue (State Taxes-I Section), and Circular dated 27th of October, 2020, issued by the

Government of India, Ministry of Finance, Department of Revenue (Central Board of Indirect taxes & Customs) Legal Cell, copy whereof is taken on record.

In view of the same, Union of India be impleaded as Party Respondent No. 4.

Registry to make necessary correction, both on the digital as also the hard file.

Dr. K.N. Singh, learned Additional Solicitor General and Shri Anshuman Singh, Sr. S.C., CGST & CX enter appearance on behalf of the newly added respondents.

Petitioner has prayed for the following relief(s):

a) For issuance of a writ in the nature of certiorari for quashing of an appellate order dated 13.02.2021 issued vide memo number 347 Purnea and its communication in form GST APL – 02 dated 13.02.2021 issued by the respondent number 2 whereby the appeal preferred by the petitioner against the order dated 12.05.2020 and summary of order in form GST DRC – 08 dated 01.07.2020 passed by the respondent No. 3 under section 73 of the Bihar Goods And Services Tax Act 2017 (hereinafter referred to as the Bihar act 2017 for short) has been rejected;

b) For issuance of a writ in the nature of certiorari for quashing of the order dated 11.02.2020 and summary of the order issued in form GST DRC – 07 dated 13.02.2020 and the rectified order 12.05.2020 and summary of order in form GST DRC – 08 dated 01.07.2020 passed and issued by the respondent No. 3 whereby liability of tax and interest has been imposed in a proceeding under section 73 of the Bihar Act 2017;

c) For further restraining the respondents from making recovery of the amount of tax and interest imposed and raised in terms of the impugned order dated 12.05.2020 passed by the respondent number 3;

d) For holding and a declaration that the impugned order dated 13.02.2021 issued vide memo number 347 Purnea by the respondent number 2 as first appellate authority is highly cryptic, nonspeaking and in teeth of section 107 of the Bihar act 2017;

e) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case.

Petitioner has filed the instant petition praying, inter alia to quash the impugned order 13th of February, 2021 (Annexure-5) passed by the Additional Commissioner of State Taxes (Appeal), Purnea Division, Purnea in Appeal Case No. (ARN) AD1002210022382 and the order in Form GST APL-02 dated 13th of February, 2021 passed in GSTIN/Temp ID/UIN 10AAXFM2133R1ZV, preferred against the order dated 13th of February, 2020 by the Joint Commissioner of State Tax, Purnea Circle, Purnea, Respondent No. 3 in Reference No. ZA1002200179629, summary of order in form GST DRC-07, order dated 01.07.2020 passed in Reference No. ZD100720000074F and Summary of rectification/withdrawal order in Form GST DRC-8 dated 1st of July, 2020 passed by Respondent No. 3. The appeal filed by the petitioner has been rejected merely on the ground of delay. Both the orders are ex parte in nature.

Learned counsel for the petitioner states that the entire amount in terms of the demand raised by the department stands recovered from the petitioner.

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 and during pendency of the case, no coercive steps shall be taken against the petitioner.

Statement accepted and taken on record.

Having heard learned counsel for the parties as also perused the record made available, we dispose of the present petition in the following mutually agreeable terms:-

(a) We quash and set aside the impugned order 13th of February, 2021 (Annexure-5) passed by the Additional Commissioner of State Taxes (Appeal), Purnea Division, Purnea in Appeal Case No. (ARN) AD1002210022382, the order in Form GST APL-02 dated 13th of February, 2021 passed in GSTIN/Temp ID/UIN 10AAXFM2133R1ZV, the order dated 13th of February, 2020 passed by the Joint Commissioner of State Tax, Purnea Circle, Purnea, Respondent No. 3 in Reference No. ZA1002200179629, summary of order in form GST DRC-07, order dated 01.07.2020 passed in Reference No. ZD100720000074F and Summary of rectification/withdrawal order in Form GST DRC-8 dated 1st of July, 2020 passed by Respondent No. 3;

(b) The case shall be decided on merits by passing a speaking order;

(c) If it is ultimately found that the amount recovered from the petitioner is in excess, the same shall be refunded within two months from the date of passing of the order;

(d) 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.

(e) Petitioner undertakes to appear before the Assessing Authority on 9th of August, 2021 at 10:30 A.M., if possible through digital mode;

(f) The Assessing Authority shall decide the case of the petitioner on merits after complying with the principles of natural justice;

(g) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

(h) During pendency of the case, no coercive steps shall be taken against the petitioner.

(i) The Assessing Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(j) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(k) 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;

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

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

(n) 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;

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

(p) 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	