IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 8623 of 2021

==

Sohan Rai, aged about 57 years (male), son of Baleshwar Rai resident of Ward No. 6, Near Middle School, P.O. Asha Parari, Gayaghat, P.S. Simari, District Buxar.

.... 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 (Appeals), Patna West division, Patna.
3. The Assistant Commissioner of State Taxes, Buxar Circle, Buxar .

…………… Respondents

==

Appearance :

For the Petitioner/s	:	Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Mr. Virendra Kumar Ray, Advocate
For the Respondent/s	:	Mr. Lalit Kishore, A.G.
For the Union of India	:	Dr. K.N. Singh, Addl. S.G. Mr. Anshuman Singh, Sr. S.C., CGST & CX

==

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 : 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 the acknowledgement contained in form GST APL - 02 dated 11 . 02. 2021 issued under rule 108 (3) of the Bihar Goods and Services Tax Rules 2017 (hereinafter referred to as the **"Bihar Rules 2017")** by the Respondent No. 2 whereby the well founded appeal of petitioner against the order dated 06.03.2020 passed by the Respondent No. 3 has been rejected, on wholly erroneous grounds and without considering the case of the petitioner.
>
> b) For issuance a further writ in the nature of certiorari for quashing of *ex-parte* order dated 06.03.2020 and the summary of order issued in form GST DRC - 07 dated 06.03.2020 passed and issued by the Respondent No. 3 under section 74 (1) of the

Bihar Goods and Service Tax Act, 2017 (hereinafter referred to as the "Bihar Act 2017") read with rule 142 (5) of the Bihar Rules 2017;

c) For holding that the order dated 11.02.2021 passed by the Respondent no 2 rejecting the appeal of the petitioner on the ground of delay is bad in law considering the COVID 19 pandemic and the orders of this Hon'ble Court in CWJC No. 5633 of 2020.

d) For holding and a declaration that the impugned order dated 06.03.2020 passed by the respondent No. 3 is highly cryptic, nonspeaking and based on complete non-application of mind to the credit balance in the electronic credit Ledger and the figures of taxable outward supplies admitted and disclosed in the returns for the period in question.

e) For issuance of a writ or order or direction restraining the Respondent No. 3 from making any coercive recovery of the amount in demand, tax, interest and penalty as contained in the order dated 06.03.2020 during the pendency of the present writ application.

f) For holding and a declaration that the appeal preferred by the petitioner against the order dated 06.03.2020 passed by the Respondent No. 3 was well within limitation in light of the 4 orders dated 30.04.2020 and 18.05.2020 passed by full bench of this Hon'ble Court in CWJC No. 5633 of 2020 in view of the pandemic having arisen out of Covid 19.

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

It is brought to our notice that vide impugned order dated 11th of February, 2021 passed by the Respondent No. 2 namely Additional Commissioner of State Taxes (Appeals), Patna West, Division, Patna in Reference No. ZD1002210084862 (Annexure-6), the appeal of the petitioner against the order dated 6th of March, 2020 passed by the Respondent No. 3 namely Assistant Commissioner of State Taxes, Buxar Circle, Buxar, in GSTIN-10AOFPR0913Q1ZW and Summary of Order dated 6th of March, 2020 in Reference No. ZA1003200078936 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 11th of February, 2021 passed by the Respondent No. 2 namely Additional Commissioner of State Taxes (Appeals), Patna West, Division, Patna in Reference No. ZD1002210084862 (Annexure-6), the order dated 6th of March, 2020 passed by the Respondent No. 3 namely

Assistant Commissioner of State Taxes, Buxar Circle, Buxar, in GSTIN-10AOFPR0913Q1ZW and Summary of Order dated 6th of March, 2020 in Reference No. ZA1003200078936;

(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)

Sujit/PKP-

AFR/NAFR	
CAV DATE	
Uploading Date	07.07.2021
Transmission Date	