IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9019 of 2021

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M/s Nilkamal Ltd. a registered company having its head office at Nilkamal house, 77/95, Road number 13/14, MIDC Andheri (East), Mumbai- 400093 through its authorized representative namely Ram Binod Singh male aged about 45 years son of Late Kedareshwar Singh Resident of Ward No.- 3, Main Road, Near Ram Janki Radha Krishna Mandir, Gauramansingh, District- Darbhanga- 847203, Bihar.

... ... Petitioner/s

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) Central Division, Patna.
3. The Deputy Commissioner of State Taxes, Special Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
Mr. Alok Kumar Jha, Advocate

For the Respondent/s : Mr. Vivek Prasad, G.P. 7

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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 : 07-07-2021

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

01.02.2021 passed by the respondent no. 2 and issued vide memo number 41/Patna in appeal cse number AD100919000211R and also for quashing of the summary of demand issued in form GST APL-04 dated 01.02.2021 by the respondent number 2;

b) For further holding and a declaration that the petitioner would be entitled to claim of unadjusted input tax credit/entry tax in terms of section 140(1) of the Bihar Act, 2017 which is substantiated by the volume of closing stock in hands of the petitioner.

c) For issuance of a writ in the nature of certiorari for quashing of the order dated 19.06.2019 passed by the respondent no. 3 under Section 73, 73(9) and 50 of the Bihar Goods and Services Tax Act 2017 (hereinafter referred to as the Bihar Act 2017 for short) whereby liability of tax, penalty and interest has been imposed without consideration of the reply submitted by the petitioner and as such violative of the principles of natural justice.;

d) For issuance of a writ or order direction restraining the respondent No. 3 and/or any other authority in the goods and services tax department from taking any coercive action in terms of section 79 or any other provisions of the Bihar Act 2017 for recovery of the amount of tax penalty and interest demanded in terms of the impugned order dated 19.06.2019 and the appellate order dated 01.02.2021 during the pendency of the instant writ application;

e) For further holding and a declaration that the petitioner may not be debarred from availing the benefit of adjustment of entry tax relatable to stock in hand as on 30.06.2017 which is provided and made available in terms of the provisions of law under Section 140(1) read with 140(3) of the Bihar Act 2017 for reasons of mere technical error made on account of bona fide understanding and belief;

f) 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 01.02.2021 passed by the Respondent No. 2 namely the Additional Commissioner of State Taxes (Appeal), Central Division, Patna, Patna in Appeal Case No. AD100919000211R (Annexure-5), the appeal of the petitioner against the order dated 19.06.2019 in GSTIN/ID- 10AAACN2329N12P passed by the Respondent No. 3 namely the Deputy Commissioner of State Taxes, Special Circle, Patna and Summary of Order in Form GST DRC-07 dated 19.06.2019 in Reference No. ZA1006190005332 has been rejected. 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 01.02.2021 passed by the Respondent No. 2 namely the Additional Commissioner of State Taxes (Appeal), Central Division, Patna, Patna in Appeal Case No. AD100919000211R (Annexure-5), order dated 19.06.2019 in GSTIN/ID- 10AAACN2329N12P passed by the Respondent No. 3 namely the Deputy Commissioner of State Taxes, Special Circle, Patna and Summary of Order in

Form GST DRC-07 dated 19.06.2019 in Reference No. ZA1006190005332;

(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 18th 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, 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	16.07.2021
Transmission Date	