IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 8956 of 2021

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Surabhi Enterprises through the Proprietor Amrendra Kumar Ranjan S/o Sri Suresh Prasad, Hera Complex, Kachari Road, Siwan, Bihar, 841226 .... Petitioner

VERSUS

1.The State of Bihar through Assistant Commissioner of State Tax,Siwan Circle,Siwan

2.Additional Commissioner of State Tax(Appeal)Saran Division,Chapra............ ....Respondent

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Appearance :

For the Petitioner/s	:	Mr. Daya Shankar Prasad Sinha, Advocate Mr. Shashi Sharan Prasad Sinha, Advocate
For the Respondent/s	:	Mr. Vivek Prasad, G.P. 7
For the Union of India	:	Dr. K.N.Singh, Addl. S.G. Mr. Anshuman Singh, Sr. S.C., CGST & CX

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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. 3.

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):

> "For issuing writ of Mandamus and other appropriate writ for seeking direction to the respondent to hear the case after condonation of delay in filing Appeal."

It is brought to our notice that vide impugned order dated 22nd of January, 2021 passed by the Respondent No. 2 namely the Additional Commissioner of State Tax (Appeal), Saran Division, Chapra, Patna in Appeal Case No. SN/GST-19/2020-21, the appeal of the petitioner against the order dated 04.03.2020 passed by the A.C.S.T., Siwan Circle, Siwan vide Process No. 2034, GSTIN 10AZJPR5167R1ZO, under Section 74(9) of GST Act, 2017; order dated 5th of March, 2020 passed in Reference No. ZA100320005480N, under Section 74 of the Act and summary of order in Form GST DRC-07 dated 5th of March, 2020, for the tax period April 2019-September, 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 22nd of January, 2021 passed by the Respondent No. 2, namely the Additional Commissioner of State Tax (Appeal), Saran Division, Chapra, Patna in Appeal Case No. SN/GST-19/2020-21; order dated 04.03.2020 passed by the A.C.S.T., Siwan Circle, Siwan vide Process No. 2034, GSTIN 10AZJPR5167R1ZO, under Section 74(9) of GST Act, 2017; order dated 5th of March, 2020 passed in Reference No. ZA100320005480N, under Section 74 of the Act and summary of order in Form GST DRC-07 dated 5th of March, 2020, for the tax period April 2019-September, 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)

Sujit/PKP-

AFR/NAFR	
CAV DATE	
Uploading Date	07.07.2021
Transmission Date	