IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9127 of 2021

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Awadhesh Prasad son of Shri Chandra Prasad resident of village - Babhandih, Police Station- Imamganj, District- Gaya, the proprietor of M/s Magadh Traders, having its office and place of business at Imamganj Main Road, Police Station- Imamganj, District- Gaya.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue, having its office at Room No. 46, North Block, New Delhi.
2. The Central Board of Indirect Taxes and Customs through its Chairman, Ministry of Finance, Department of Revenue, having its office at Room No. 46, North Block, New Delhi.
3. The State of Bihar through the Secretary - cum - Commissioner of State Tax, Bihar having its office at Vikas Bhawan, Bailey Road, Patna.
4. The Additional Commissioner of State Taxes (Appeal), Magadh Division, Gaya.
5. The Assistant Commissioner of State Tax, Gaya, Magadh, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Parijat Saurav, Advocate
For the Respondent/s	:	Mr.Dr. K. N. Singh (ASG)
		Mr. Ajay Kumar Rastogi, A.A.G. 10

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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 : 01-07-2021

Petitioner has prayed for the following relief(s):

> “i) For issuance of a writ in the nature of Certiorari or any other appropriate writ or order for quashing of order-in-appcal dated

17/03/2021 passed in Appeal case No. GY/GST-10/2020-21 along with summary of demand in Form GST APL-04 dated 17/03/2021 passed by the respondent no. 4, the Additional Commissioner of State Taxes (Appeal), Magadh Division, Gaya, Bihar, whereby the appeal of the petitioner was dismissed, and further be pleased to quash the assessment order-in-original contained in Ref. No. ZA100320017077E dated 13/03/2020 passed under the signature of respondent no. 5 and the consequential demand notice contained in Form GST DRC-07 dated 13/03/2020, as rectified by order dated 30/06/2020 in Ref No. ZD1006200012891, levying tax amounting to Rs. 46,08,775.00/- (Rs. Forty six lac, eight thousand, seven hundred and seventy five only) alongwith interest and penalty for the period March 2019 (Financial Year 2018-19).

ii) For issuance of an appropriate writ, order or direction for holding and declaring the Section 16(4) of the Central/Bihar Goods and Service Act, 2017 as ultra vires the provisions of Article 14, 19(1)(g) and 300A of the Constitution of India and also being violative of Section 16(1) and (2) and the basic structure of CGST/BGST Act, 2017.

iii) For issuance of an appropriate writ, order or direction for holding and declaring the Rule 61(5) of the Central/ Bihar Goods and Service Rules, 2017 as amended by notification no. 49/2019 with retrospective date of 01.07.2017, as ulra vires the provisions of Article 14, 19(g) and 300A of the Constitution of India and also being violative of Section 16(1) and (2) and the basic structure of CGST/BGST Act, 2017.

iv) In alternate be pleased to hold and declare that Section 16(4) of the CGST/BGST Act, 2017 and amended Rule 61(5) of the CGST/BGST Rules, 2017 arc not applicable in the case of the petitioner.

v) Be pleased to stay the operation of the demand notice contained in Form GST DRC-07 dated 13/03/2020 and demand in Form GST APL-04 dated 17/03/2021, levying tax amounting to Rs. 46,08,775.00/- (Rs. Forty six lac, eight thousand, seven hundred and seventy five only) alongwith interest and penalty, during the pendency of the present writ application.

vi) For issuance of any other appropriate writ, order or direction which Your Lordships may deem fit and proper in the facts and circumstances of the case."

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)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	07.07.2021
Transmission Date	