IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9611 of 2021

==

Raj Kishore Sharma Son of Hari Narayan Sharma Resident of village- Dhanushi, Post Office- Narma, Police Station- Hathauri, District- Muzaffarpur

... ... 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 Assistant Commissioner of State Tax, East Circle, Muzaffarpur

... ... Respondent/s

==

Appearance :

For the Petitioner/s : Mr.Parijat Saurav, Advocate

For the Respondent/s : Mr. (Dr.) K. N. Singh, ASG

Mr. Ajay Kumar Rastogi, AAG-10

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-07-2021

Petitioner has prayed for the following relief(s):

i) 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/BIHAR GST Act, 2017.

ii) 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 *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) 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 are not applicable in the case of the petitioner.

iv) For issuance of a writ in the nature of **Certiorari** or any other appropriate writ or order for quashing of order dated order-in-appeal dated 08/02/2021 passed by the respondent no. 4, the Assistant Commissioner of State Taxes, East Circle, Muzaffarpur and the consequential demand issued under form DRC-07 dated 09/02/2021 issued by the respondent no. 4 levying tax amounting to Rs. 1,67,81,908.70/- (Rs. One crore, sixty seven lacs, eighty one thousand, nine hundred and eight and seventy paise only) alongwith interest of Rs. 38,51,103.21/- (Rs. Thirty eight lacs, fifty one thousand, one hundred and three and twenty one paise only) and penalty of Rs. 16,78,190.86/- (Rs. Sixteen lacs and seventy eight thousand one hundred and ninety and eighty six paise only), totalling to Rs. 2,23,31,202.77/- (Rs. Two crore, twenty three lacs, thirty one thousand, two hundred and two and seventy seven paise) for the period April 2019 to March 2020 – Financial Year 2019-20.

v) Be pleased to stay the operation of the demand notice contained in Form GST DRC-07 dated 09/02/2021 levying tax amounting to Rs. 1,67,81,908.70/- (Rs. One crore, sixty seven lacs, eighty one thousand, nine hundred and eight and seventy paise only) alongwith interest of Rs. 38,51,103.21/- (Rs. Thirty eight lacs, fifty one thousand, one hundred and three and twenty one paise only) and penalty of Rs. 16,78,190.86/- (Rs. Sixteen lacs and seventy eight thousand one hundred and ninety and eighty six paise only), totalling to Rs. 2,23,31,202.77/- (Rs. Two crore, twenty three lacs, thirty one thousand, two hundred and two and seventy seven paise) for the period April 2019 to March 2020 – Financial Year 2019-20.

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.

The instant petition has been filed for quashing of the impugned order dated 8th February, 2021 passed by the Respondent No. 4 namely Assistant Commissioner of State Taxes, East Circle, Muzaffarpur and consequential demand issued under form DRC-07 dated 09.02.2021.

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 order dated 8th February, 2021 passed by the Respondent No. 4 namely Assistant Commissioner of State Taxes, East Circle, Muzaffarpur and consequential demand issued under form DRC-07 dated 09.02.2021;

(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 31st 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) The Assessing Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

(n) Liberty reserved to the petitioner to challenge the vires of Section 16(4) of GST Act and Rule 61(5) of the

GST Rules [prayer (i) and (ii)] by way of separate proceedings.

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

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

(q) 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;

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

(s) 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)

Ashwini/PKP/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	