IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 9559 of 2021

Maa Kali Traders, a proprietory concern having its office at Korean, Masumganj, Munger through its proprietor, Anupam Kumari (Female) (aged about 44 years) daughter of Shri. Murlidhar Prasad Yadav, resident of Gram Koriyan, Masumganj, P.S. Masumganj, Munger, Bihar.

... Petitioner

Versus

1. State of Bihar through the Commissioner of State Tax, having its office at Vikas Bhawan Bailey Road, Patna.
2. Addl. Commissioner of State Tax (Appeal), Bhagalpur Division, Bhagalpur.
3. Joint Commissioner of State Tax, Munger Circle, Munger, Bihar.

... Respondents.

Appearance

For the Petitioner/s	:	Mr. D.V. Pathy, Advocate
		Mr. Sadashiv Tiwari, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, S.C. 11

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL ORDER

(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.)

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2 17-09-2021 We are informed that vide judgment dated 07.07.2021 passed by this Court in the instant petition, the petition was disposed of with a direction to the petitioner to appear before the Assessing Authority. However, inadvertently, another order has been typed with a direction to the petitioner to appear before the Appellate Authority, which needs to be modified.

Having gone through the record, we recall the order dated 07.07.2021 passed in the instant case.

The following order be treated to have been passed in the instant case on the said date:-

"Petitioner has prayed for the following relief(s):-

i) the order dated 09.02.2020 (as contained in Annexure – 10) passed by the respondent no. 3 under section 74 of the Bihar Goods and Services Tax Act, 2017 (here in after called the Act) for the Tax Period April 2018 to March 2019 imposing tax, interest and penalty after withdrawal of the earlier order raising demand of tax without issue of a notice as mandated in section 161 of the Act and without a passing a speaking order in contravention to the settled principles of natural justice and fair play in action be quashed.

ii) the order dated 25.02.2021 (as contained in Annexure – 14) passed by the respondent no. 2 dismissing the appeal in liminie on a solitary ground of delay in filing of the appeal without consideration of the fact that such a period of 157 days itself was consumed in the grant of certified copy of the impugned assessment order and also the notifications issued by the Central Government and also the judgement and orders of the Hon'ble Supreme Court of India extending the period of limitation.

iii) the notice of demand dated 09.02.2020 (as contained in Annexure – 11 series) issued by the respondent no. 3 raised in pursuance of an order of assessment/scrutiny be quashed.

iv) for granting any other relief (s) to which the petitioner is otherwise found entitled to.

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It is brought to our notice that vide impugned order dated 25th of February, 2021 (Annexure-14) passed by the Addl. Commissioner of State Tax (Appeal), Bhagalpur Division, Bhagalpur in Appeal Case No. MGGST:05/20-21 for the period 01.04.2018 to 31.03.2019, the appeal of the petitioner against the order dated 09.02.2020 passed by the Joint Commissioner of State Tax, Munger Circle, Munger, Bihar, in Reference No. ZA100220009338C (Annexure-10) and Summary of order in Form GST DRC-07 dated 9th of February, 2020 (Annexure-11 series) has been rejected merely on the grounds of being barred by limitation. The orders are *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 25th of February, 2021 (Annexure-14) passed by the Addl. Commissioner of State Tax (Appeal), Bhagalpur Division, Bhagalpur in Appeal Case No. MGGST:05/20-21 for the period 01.04.2018 to 31.03.2019, order dated 09.02.2020 passed by the Joint Commissioner of State Tax, Munger Circle, Munger, Bihar, in Reference No. ZA100220009338C (Annexure-10) and Summary of order in Form GST DRC-07 dated 9th of February, 2020 (Annexure-11 series);

(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 11th of October, 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 order, if required and desired;

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

(p) 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;

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

(r) 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."

To the above extent, judgment dated 07.07.2021 passed in the instant petition is modified.

Learned counsel for the respondents undertakes to also communicate this order to the appropriate authority through electronic mode.

Let a copy of this order be kept, both on the digital as also the hard file.

(Sanjay Karol, CJ)

(S. Kumar, J)

Amrendra/PKP

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