IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 9671 of 2021

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M/s Shankar Prasad a proprietorship firm having it's place of business at Gandhi Chowk, Munger through its authorized representative namely Ashish Kumar male aged about 28 years son of Shankar Prasad [Proprietor] resident of Gandhi Chowk, Munger. .... Petitioner

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 (Appeals) Bhagalpur Division, Bhagalpur.
3. The Assistant Commissioner of State Taxes, Munger Circle, Munger. [2019-2020]
4. The Joint Commissioner of State Taxes, Munger Circle, Munger.

…………… Respondents

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Appearance :
For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
For the Respondent/s : Mr. Vikash Kumar, S.C. 11

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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 : 11-06-2021

Learned counsel for the parties desire the matter be taken up today.

Petitioner has prayed for the following relief(s):

a) For issuance of a writ in the nature of certiorari for quashing of the order dated 06.03.2020 and summary of order in form GST DRC – 07 dated 06.03.2020 passed and issued by the respondent number 3 under section 74 (1) of the Bihar Goods And Service Tax Act, 2017 (hereinafter referred to as the "Bihar act 2017" for short);

b) For further quashing of the impugned order dated 03.03.2021 passed by the respondent number 2 whereby the appeal preferred by the petitioner against the order dated 06.03.2020 has been rejected on technical grounds of delay;

c) For holding and a declaration that the entire process of inspection done in the inspection report dated 23.10.2019 is illegal and without jurisdiction as the same is violative of section 67 (1) and section 67 (10) of the Bihar act 2017;

d) For holding and a declaration that the impugned order dated 06.03.2020 passed by the respondent No. 3 is illegal and without jurisdiction as the very basis of such order being the inspection carried out in violation of the provision of section 67 (1) and section 67 (10) of the Bihar act 2017 and accordingly liable to be quashed by this honourable court;

e) For issuance of a writ or order or direction holding the action of the respondent number 3 already taken in terms of section 79 (1) (c) of the Bihar act 2017 for recovery of the amount of tax, interest and penalty imposed in terms of the order dated 06.03.2020 being illegal and without jurisdiction as it is not preceded by due compliance of the condition mandated in the proviso to section 78 of the Bihar act 2017;

f) For issuance of a writ or order or direction restraining the respondent No. 3 from making any coercive recovery of the amount in demand (tax, interest and penalty) as contained in the order dated 06.03.2020 during the pendency of the present writ application;

g) 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 post passing of the impugned order dated 6th of March, 2020 by Respondent No. 3 namely The Assistant Commissioner of State Taxes, Munger Circle, Munger in GSTIN 10AKAPP4432B1Z0, under Section 74 of the Bihar Goods And Service Tax Act, 2017, petitioner's bank account(s) also stands attached. Also, post passing of the impugned order dated 6th of March, 2020, and summary of order in Form GST DRC-07 dated 6th of March, 2020 passed by Respondent No. 3 namely The Assistant Commissioner of State Taxes, Munger Circle, Munger in Reference No. ZA100320006771F under Rule 142 (5) of the Bihar Goods And Services Tax Rules, 2017, petitioner preferred an appeal bearing Appeal Case No. MGGST 39/20-21, which was rejected vide order dated 3rd of March, 2021 by Respondent No. 2, namely The Additional Commissioner of State Taxes (Appeals), Bhagalpur Division, Bhagalpur, only on the ground of delay.

Learned counsel for the Revenue, on the ground of availability of equally alternative efficacious remedy vehemently opposed the prayer made on behalf of the petitioner.

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 of assessment 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 6th of March, 2020 by Respondent No. 3 namely The Assistant Commissioner of State Taxes, Munger Circle, Munger in GSTIN 10AKAPP4432B1Z0, under Section 74 of the Bihar Goods And Service Tax Act, 2017, summary of order in Form GST DRC-07 dated 6th of March, 2020 passed by Respondent No. 3 namely The Assistant Commissioner of State Taxes, Munger Circle, Munger in Reference No. ZA100320006771F; as also the appellate order dated 3rd of March, 2021 passed by Respondent No. 2, namely The Additional Commissioner of State Taxes (Appeals), Bhagalpur Division, Bhagalpur in Appeal Case No. MGGST 39/20-21.

(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;

(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) In this view of the matter, we also direct for de-freezing/de-attaching of the bank account(s) of the writ-petitioner attached in reference to the proceedings, subject matter of present petition. This shall be done immediately.

(f) Petitioner undertakes to appear before the Assessing Officer on 26th of July, 2021 at 10:30 A.M., if possible through digital mode;

(g) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

(h) The Assessing Officer shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(i) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(j) The Assessing Officer shall decide the matter on merits expeditiously, preferably within a period of two months from the date of appearance of the petitioner;

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

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

(m) 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;

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

(o) If possible, proceedings during the time of current Pandemic [Covid-19] be conducted through digital mode;

(p) All other prayers are left open to be adjudicated if the petitioner so desires, in an appropriate proceedings;

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	12.06.2021
Transmission Date	