IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9919 of 2021

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Rajendra Prasad Chaurasia, S/o Bano Prasad Chaurasia, R/o-Flat No. 404, S.S. Enclave, Ashiana Digha Road, Opp. Rakhi Complex, Rukanpura, Patna-800014, Proprietor at M/s Radha Krishna Enterprises having its Office at GR, Indirapuri Colony, East of Ramnagri More, Ashiana Digha Road, Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner-Cum-Principal Secretary, Commercial Tax Department, Government of Bihar, Patna.
2. The Commissioner-Cum-Principal Secretary, Commercial Tax Department, Government of Bihar, Patna
3. The Additional Commissioner of State Tax (Appeal), Patna West Division, Patna.
4. The Assistant Commissioner of State Tax, Patna Central Patna West, Bihar

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Kaushal Kishore Mishra, Advocate Mr. Isshan Singh, Advocate Mr. Subham Bajaj, Advocate Mr. Anurag Saurav, Advocate
For the Respondent/s	:	Mr.Vikash Kumar, SC 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 : 22-07-2021

Petitioner has prayed for the following relief(s):

i) To issue an appropriate order/direction in the nature of Certiorari quashing the Demand Order dated

06.03.2020 and DRC-07 order dated 09.03.2020 bearing Reference No. ZA1003200139548 whereby the Respondent Authority has arbitrarily directed the Petitioner to pay Goods and Services tax on the Total amount received (Total Outward Supply+ GST) which is already inclusive of Goods and Services Tax;

ii) To issue an appropriate order/direction in the nature of Certiorari quashing the Appeal rejection order dated 13.02.2021 bearing reference No. ZD1002210093483 whereby the Respondent Authority has rejected the Appeal of the Petitioner without granting any opportunity of hearing to the Petitioner which violates Article 14 of the Constitution of India;

iii) To issue an appropriate order/direction in the nature of Mandamus directing the Respondent Authorities to grant an opportunity of hearing to the petitioner to present his case before the Appropriate Authority according to law;

iv) To issue an appropriate order/direction in the nature of Mandamus directing the Respondent Authorities not to take any coercive action against the Petitioner until the disposal of this writ petition as an interim relief;

v) To pass any other order or orders for which the Petitioners may be found entitled in the facts and circumstances of this case.

vi) Or may pass any other suitable order/orders which your Lordships may deem fit and proper in facts and circumstances of this case."

It is brought to our notice that vide impugned order dated 13.02.2021 passed by the Respondent No. 3 namely

Additional Commissioner of State Tax (Appeal), Patna, West Division, Patna in Form GST APL-02 (Reference No. ZD1002210093483), the appeal of the petitioner against the order dated 06.03.2020 passed by the Respondent No. 4 namely the Assistant Commissioner of State Tax, Patna in GSTIN-10AGWPC6254A1ZU issued under DRC-07 dated 09.03.2020 (Reference No. ZA1003200139548) 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 13.02.2021 passed by the Respondent No. 3 namely Additional Commissioner of State Tax (Appeal), Patna, West Division, Patna in Form GST APL-02 (Reference No. ZD1002210093483), and the order dated 06.03.2020 passed by the Respondent No. 4 namely the Assistant Commissioner of State Tax, Patna in GSTIN-10AGWPC6254A1ZU issued under DRC-07 dated 09.03.2020 (Reference No. ZA1003200139548)**;**

(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 3rd September, 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.

(Sanjay Karol, CJ)

(S. Kumar, J)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	