IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8393 of 2021

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M/s Royal Enterprises through its proprietor Pawan Kumar Mishra, Male, Aged about 44 Years S/o Awdhesh Kumar Mishra R/o, Jagarnathpur PO - Nandlalpur, PS- Kahalgaon, Dist- Bhagalpur, Pin- 813222 Bihar.

... ... Petitioner/s

Versus

1. The Union of India through The Secretary, Department of Revenue, Ministry of Finance, New Delhi.
2. The Secretary, Department of Revenue, Ministry of Finance, Government of India, New Delhi.
3. The Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance, Government of India, New Delhi.
4. The Chief Commissioner of Central Taxes, 3rd Floor, Central Revenue (Annex) Building, Birchand Patel Path, Patna.
5. The State of Bihar through the Commissioner-cum Secretary, Commercial Taxes, Govt. of Bihar, Patna.
6. The Commissioner of State Tax, Vikash Bhawan, Patna.
7. The Additional Commissioner State Taxes (Appeal), Bhagalpur Division, Bhagalpur.
8. The Assistant Commissioner of State Tax, Bhagalpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Brisketu Sharan Pandey, Advocate
For the Respondent/s	:	Mr.Vivek Prasad, GP-7
For the Union of India	:	Dr. K.N.Singh, A.S.G.
		Mr. Anshuman Singh, Sr. S.C., CGST & CX

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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 : 01-07-2021

Petitioner has prayed for the following relief(s):

a. for issuing writ of certiorari for quashing the order dated 13.03.2020 Summary of Order (demand order issued in FORM GST DRC 07) dated 13.03.2020 issued for the tax period March 2019 wherein a demand of tax of Rs.22,53,341.00/-, interest of Rs.120,013/- and penalty of Rs.2,25,333/- totalling to Rs.25,98,687/- for IGST, CGST and SGST has been levied against the petitioner.

b. For issuing writ/writs, order/orders including the writ of certiorari for quashing the order dated 25.02.2021 passed by the Appellate Authority wherein the appeal of the petitioner was dismissed only on the ground of limitation in COVID 19 period ignoring the fact that the Hon'ble Supreme Court has specifically directed that limitation all the laws has to be ignored during the COVID Period.

c. For issuing writ/writs, order/orders including the writ of certiorari for quashing the demand order/summary of order of appellate authority passed in form GST APL 04 dated 26.02.2021 wherein a demand of tax of Rs.22,53,341.00/-, interest of Rs.120,013/- and penalty of Rs.2,25,000/- totalling to Rs.25,98,687/- for IGST, CGST and SGST has been confirmed against the Petitioner.

d. For issuing writ/writs, order/orders including the writ of mandamus after remanding the case back to the assessing authority and directing him/her to assess the liability of the Petitioner afresh after considering the submissions and merits of the case.

e. For reading down section 16(4) of the CGST/BGST Act in a manner which this court deems fit in order to enable the petitioner to claim its rightful imput tax credit given the fact tht the petitioner has filed its GST returns under section 39 of the act after the stipulated time period.

f. For holding that the petitioner who failed to file return claiming Input Tax Credit (ITC) for the period March 2019 within the prescribed period of Section 16 of GST Act cannot be deprived of its genuine claim to avail Input on the purchase made by it during the aforesaid period specially when the time limit to file the return were extended by the Respondents themselves.

g. For issuing appropriate direction to Respondents No. 1 to 3 to issue appropriate notification and thereby creating provision for extension in availment of Input Tax Credit u/s 16 of GST Act as and when extension is granted for filling of GST Returns in Form GSTR-1 and GSTR-3B.

h. For holding that the imposition of liability of tax, interest and penalty on Petitioner by the Respondent is illegal and void.

i. For holding that the Respondents cannot impose any liability of interest as well as tax on the petitioner when there has been no loss of revenue to the state.

j. For directing the Respondents not to take any coercive action against the Petitioner until the Pendency of the proceedings.

k. For refund of any amount which has been recovered through bank attachment/special mode of recovery during the pendency of this writ application.

l. To pass any other order/orders which it may deem fit in the facts and circumstances of the case and within the ends of equity, justice and good conscience.

The petitioner has prayed for quashing of the order dated 13.03.2020 passed by the Respondent No.8, the Assistant Commissioner of State Tax, Bhagalpur, the summary of demand dated 26.02.2021 passed in form GST APL-04, in Reference No. ZA1003200159439 and the order dated 25.02.2021 passed by the Respondent No. 7 namely the Additional Commissioner of State Tax (Appeal), Bhagalpur Division, in Appeal Case No. BH/GST-34/2020-21, whereby the appeal of the petitioner has been rejected merely on the grounds of being barred by limitation.

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 13.03.2020 passed by the Respondent No.8, the Assistant Commissioner of State Tax, Bhagalpur, the summary of demand order dated 26.02.2021 passed in form GST APL-04, in Reference No. ZA1003200159439 and the order dated 25.02.2021 passed by the Respondent No. 7 namely the Additional Commissioner of State Tax (Appeal), Bhagalpur Division, in Appeal Case No. BH/GST-34/2020-21;

(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. 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)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	07.07.2021
Transmission Date	