IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10149 of 2021

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M/s Madan Kumar a proprietorship firm having its place of business at near Middle School, Herudiyara, Munger through its authorised representative namely Shri Vikash Saraf male aged about 41 years son of Late Bijay Agrawal resident of Bekapur, Shivaji Chowk, Munger- 811201.

... ... Petitioner/s

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. (September- 2019).

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
Mr. Alok Kumar Jha, 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)

(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 : 08-07-2021

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 05.03.2020 and summary of order in form GST DRC -07 dated 05.03.2020 under rule 142 (5) of the Bihar Goods And Services Tax Rules, 2017 (hereinafter referred to as the "Bihar rules 2017" for short) passed 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 issuance of a writ in the nature of certiorari for quashing of the order dated 27.02.2021 passed by the respondent number 2 whereby the appeal preferred by the petitioner against the original order dated 05.03.2020 has been rejected on grounds of delay;

c) For holding and a declaration that the impugned order dated 05.03.2020 passed by the respondent No. 3 is highly cryptic, misconceived, nonspeaking and violative of principles of natural justice as the reply filed by the petitioner has not been considered at all before the passing the impugned order inflicting financial liabilities in the shape of tax, interest and penalty;

d) 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 05.03.2020 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.

(e) 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 05.03.2020 during the pendency of the present writ application;

(f) For further issuance of a writ or order or direction upon the respondent No. 3 to refund of the amount already recovered from the petitioner in exercise of powers under section 79 of the Bihar act 2017;

(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 vide impugned order dated 27.02.2021 (Annexure-9) passed by the Respondent No. 2 namely the Additional Commissioner of State Taxes (Appeals), Bhagalpur Division, Bhagalpur in Appeal Case No. MGGST 15/20-21, the appeal of the petitioner against the order dated 05.03.2020 (Annexure-6) passed by the Respondent No. 3 namely the Assistant Commissioner of State Taxes, Munger Circle, Munger, and Summary of Order dated 05.03.2020 in Reference No. ZA1003200048864 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 impugned order dated 27.02.2021 (Annexure-9) passed by the Respondent No. 2 namely the Additional Commissioner of State Taxes (Appeals), Bhagalpur Division, Bhagalpur in Appeal Case No. MGGST 15/20-21, order dated 05.03.2020 (Annexure-6) passed by the Respondent No. 3 namely the Assistant Commissioner of State Taxes, Munger Circle, Munger, and Summary of Order dated 05.03.2020 passed in Reference No. ZA1003200048864;

(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 16th 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 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.

(Sanjay Karol, CJ)

(S. Kumar, J)

PKP/Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	