IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11396 of 2021

==

Luqueman Ali Siddiqui Son of Taslim Siddiqui Resident of village- Chandpura, Post Office- Chandpura, Police Station- Isuapur, District- Saran, Chapra

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary-cum-Commissioner of State Tax, Commercial Tax Department, Bihar having its office at Vikas Bhawan, Bailey road, Patna
2. The Additional Commissioner of State Taxes (Appeal) saran Circle Chapra, Bihar
3. The Assistant Commissioner of State Tax Saran Circle, Chapra, Bihar
4. The Deputy Commissioner of State Tax Saran Circle, Chapra, Bihar
5. The Bank Manager, Canara Bank, Rampuratauli Branch, Chapra, Bihar

... ... Respondent/s

==

Appearance :

For the Petitioner/s : Mr.Parijat Saurav, Advocate

For the Respondent/s : Mr.Vikash Kumar, SC-11

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 08-07-2021

Petitioner has prayed for the following relief(s):

i) For issuance of a writ in the nature of **Certiorari** or any other appropriate writ or order for quashing of order-in-appeal dated 02.03.2021 contained in GST APL-02 passed by the respondent no. 2, the Additional Commissioner of State Taxes (Appeal), Saran Circle, Chapra, Bihar, whereby the appeal of the petitioner was dismissed in perfunctory and mechanical manner on the grounds of delay in submission of Appeal, and further be pleased to quash the order-in-original dated 24.02.2020 passed under Section 73 of the Bihar Goods and Service Tax Act, 2017 by the respondent no. 3 and the consequential formal order dated 29.02.2020 and demand notice contained in Form GST DRC-07 dated 29.02.2020, levying tax amounting to Rs. 21,54,555.02/- (Rs. Twenty one lac, fifty four thousand, five hundred and fifty five and two paise only) with interest.

ii) For issuance of a writ in the nature of **Certiorari** or any other appropriate writ or order for quashing the garnishee notice / order issued by the respondent no. 4 in ref. no. 2124 dated 22.02.2021 for attachment of the bank account of the petitioner, and further be pleased to issue a writ in the nature of **Mandamus** or any other appropriate writ, order or direction for directing the respondentsto unfreeze/release the cash-credit bank account of the petitioner having account no. 1728261000064, with Canara Bank, Saran Chapra, Patna, which was put under attachment.

iii) For issuance of any other appropriate writ, order or direction which Your Lordships may deem fit and proper in the facts and circumstances of the case.

The instant petition has been filed for quashing of the order dated 02.03.2021 passed by Respondent No. 2 namely Additional Commissioner of State Taxes (Appeal), Saran

Circle, Chapra whereby the appeal of the petitioner preferred against the impugned order dated 24.02.2020 and consequential demand notice dated 29.02.2020 in Form GST DRC-07 issued by Respondent No. 3 namely the Assistant Commissioner of State Tax, Saran Circle, Chapra 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 02.03.2021 passed by Respondent No. 2 namely Additional Commissioner of State Taxes (Appeal), Saran Circle, Chapra, the order dated 24.02.2020 and consequential demand notice dated 29.02.2020 in Form GST DRC-07 issued by Respondent No. 3 namely the Assistant Commissioner of State Tax, Saran Circle, Chapra **;**

(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 on16th 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) 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/-

AFR/NAFR	
CAV DATE	
Uploading Date	14.07.2021
Transmission Date	