IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9980 of 2021

M/S. G.Hardware through Sole Propreitor Shahnshah Mubarak, aged 28 years approximately, male, son of Ashfak Alam, resident of Farsadenga, Naya Tola, Fakirtoli, P.O. Asja Mobaiya via Baisi, P.S. Amour, District- Purnia.

... ... Petitioner/s

Versus

1. The Union of India through Secretary, Ministry of Finance, Government of India, New Delhi.
2. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
3. The Additional Commissioner (Appeals), State Goods and Services Tax, Purnia, Bihar.
4. The Joint Commissioner of State Taxes, Purnia Circle, Purnia, Bihar.
5. The Assistant Commissioner of State Taxes, Purnia Circle, Purnia, Bihar.

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr.Sriram Krishna, Advocate

For the Respondent/s : Mr. Vivek Prasad, GP-7

For the Union of India : Dr. K.N.Singh, Addl. S.G.

Mr. Anshuman Singh, Sr. S.C., CGST & CX

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 : 07-07-2021

Petitioner has prayed for the following relief(s):

(a) For issuance of an appropriate writ(s), direction(s), order(s) to the respondent authorities setting aside the order dated 09.01.2021 passed by the Additional Commissioner (Appeal) State Goods and Services Tax, Purnea, Bihar contained in Memo No. 309 dated 11.01.2021 whereby the respondent No.3 herein has rejected the petitioner's Appeal No. (ARN) AD1003200042843 and has upheld the order dated 05.03.2020 passed by the respondent no.4 herein;

b) For reading down section 16(4) of the Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as'the BGST Act') to the extent that it curtails the petitionier's right in availing Input Tax Credit (hereinafter referred to as 'the ITC') on account of slight delay in filing Form GSTR-3B for the month of March 2019;

(c) For issuance of an appropriate writ(s), direction(s) order(s) to the respondent authorities to permit the petitioner to avail ITC on the basis of Form GSTR-3B for the month of March 2019 on the ground that a vested substantive right cannot be taken away on account of certain procedural delay for which the petitionier herein cannot be solely blamed;

(d) For setting aside of Form GST DRC-13 issued under Rule 145(1) of the Bihar Goods and Services Tax Rules, 2017 (hereinafter referred to as'the BGST Rules') to the Canara Bank, Asja Mowaiya, (Janta Hat) via Bhaisi, Purnia, Bihar for recovery of Rs.3349049/- where the petitioner has its Bank Account Nos. (i) 1860261001034, (ii) 1860214000005,(iii) 1860201000062, (iv) 1860101014106, (v) 1860201000112 and (vi) 1860101016307 which have been attached on 26.03.2021 and for consequent release of the said Bank Accounts;

(e) For restraining the respondents from making any recovery from the bank accounts of the petitioner till pendency and final adjudication of this writ petition; and

(f) For issuance of any other appropriate writ(s), direction(s) or order(s) as this Hon'ble Court may deem fit on the facts and in the circumstances of the case."

It is brought to our notice that vide impugned order dated 09.01.2021 passed by the Respondent No. 3 namely Additional Commissioner (Appeal), State Goods and Services Tax, Purnea in Appeal No. (ARN) AD1003200042843, the appeal of the petitioner against the order dated 05.03.2020 passed by the Respondent No. 5 namely Assistant Commissioner of State Taxes, Purnia Circle, Purnia in GSTIN No. 10CMCPM6449K1ZZ and Summary of Order dated 05.03.2020 in Reference No. ZA100320005187F has been rejected.

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 09.01.2021 passed by the Respondent No. 3 namely Additional Commissioner (Appeal), State Goods and Services Tax, Purnea in Appeal No. (ARN) AD1003200042843, the order dated 05.03.2020 passed by the Respondent No. 5 namely Assistant Commissioner of State Taxes, Purnia Circle, Purnia in GSTIN No. 10CMCPM6449K1ZZ and Summary of Order dated 05.03.2020 in Reference No. ZA100320005187F;

(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 18th 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	
Transmission Date	