IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 10587 of 2021

Shivam Jan Swasthya Evem Sarvangin Vikas Kendra, a Non-Government Organisation, having its office at 5C/12, Manna Singh Lane, Boring Road, Bihar, 800001, through its Secretary, Raushan Kumar, aged about 50 years (male), son of Ram Babu Singh, resident of Machaha, Ulao, District Begusarai

---------------- Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Commercial Taxes Department, Government of Bihar.

2. The Principal Secretary cum Commissioner, State Tax, Commercial Taxes Department, Government of Bihar.

3. The Additional Commissioner (Appeal), State Tax, Patna West Division, Patna.

4. The Assistant Commission of State Tax, Patna Central Circle, Patna West.

5. The Deputy Commissioner of State Tax, Patna Central Circle, Patna West.

... ... Respondent/s

Appearance

For the Petitioner/s	:	Mr. Suraj Samdarshi, Advocate
		Mr. Avinash Shekhar, Advocate
		Mr. Ranjan Prakash, Advocate
For the Respondent/s	:	Mr. Vivek Prasad, G.P. 7

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL ORDER

(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.)
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2 02-08-2021 We are informed that vide judgment dated 08.07.2021 passed by this Court in the instant petition, the petition was disposed of with a direction to the petitioner to appear before the Assessing Authority. However, inadvertently, another order has been typed with a direction to the petitioner to appear before the Appellate Authority, which needs to be modified.

Having gone through the record, we recall the order dated 08.07.2021 passed in the instant case.

The following order be treated to have been passed in the instant case on the said date:-

"Petitioner has prayed for the following relief(s):-

> "i) To issue an appropriate writ, order or direction in the nature of *certiorari* for quashing order contained in memo no 71 dated 21.01.2021 passed by Respondent Additional Commissioner (Appeal), State Tax in Case no. GST / PTC - 09 / 20-21 whereby the well-founded appeal of the petitioner against the adjudication order dated 02.03.2020 passed by the Respondent Deputy Commissioner of State Tax under section 74 of the BGST Act 2017 directing the petitioner to deposit

Tax of Rs. 45,61,840/ - Interest of 6,40, 940/- and penalty of Rs. 45,61,840/- (Total Rs. 97,64,620/-), has been rejected on wholly erroneous grounds and without considering the case of the petitioner.

ii) To issue an appropriate writ, order or direction in the nature of *certiorari* for quashing the adjudication order dated 02.03.2020 passed by the Respondent Deputy Commissioner of State Tax under section 74 of the BGST Act 2017 directing the petitioner to deposit Tax of Rs. 45,61,840/ - Interest of 6,40,940/- and penalty of Rs. 45,61,840/- (Total Rs. 97,64,620/-).

iii) To issue an appropriate writ, order or direction in the nature of *certiorari* for quashing the show cause contained in Reference no ZA1001200125651 dated 27.01.2020 issued by the Respondent Deputy Commissioner of State Tax under section 74 BGST Act 2017 alleging concealment in outward supply of Rs. Rs. 2, 53,43, 550.

iv) To issue an appropriate writ, order or direction in the nature of *certiorari* for quashing letter dated 21.01.2021 issued by the Respondent Assistant Commissioner State Tax to the Branch Manager Axix Bank, Udaiman Apartment, Boring Road, Patna, under section 79(1)(c) of the Central Goods and Services Tax 2017 directing them to make payment of Rs. 93,08,436/- on behalf of the petitioner.

v) During the pendency of this writ application the

Respondents may be directed not to take any coercive steps against the petitioner for recovery of the disputed tax amount.

vi) This Hon'ble Court may further adjudicate and hold that the services provided by the Petitioner is exempted under sl no. 3 of the notification no 12/2017 central tax (rate) dated 28.06.2017.

vii) This Hon'ble Court may further adjudicate and hold that the show cause dated 27.01.2020, the adjudication order dated 02.03.2020 and the appellate order contained in memo no. 71 dated 21.01.2021 having been issued without any DIN are in contravention of circular no 122 / 41 / 2019 / GST dated 05/11 /2019 and are therefore bad in law.

viii) This Hon'ble Court may further adjudicate and hold that the adjudication order is bad is law inasmuch as no reasons have been given for confirming the disputed tax.

ix) This Hon'ble Court may further adjudicate and hold that the order of appellate authority dated 21.01.2021 is bad in law inasmuch as the same has been passed in a mechanical manner without any application of mind and without dealing with the grounds raised by the petitioner.

x) To grant any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case."

It is brought to our notice that vide impugned order dated 21st of January, 2021, passed by the Respondent No. 3 namely the Additional Commissioner (Appeal), State Tax, Patna West Division, Patna, in Appeal Case No. GST/PTC-09/20-21 (Annexure-5), the appeal of the petitioner against the order dated 02.03.2020 passed by the Respondent No. 5 namely the Deputy Commissioner of State Tax, Patna Central Circle, Patna West, in GSTIN – 10AAETS1637B2Z4 (Annexure-4), has been rejected. Both the orders were *ex parte* in nature.

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 21st of January, 2021, passed by the Respondent No. 3 namely the Additional Commissioner (Appeal), State Tax, Patna West Division, Patna, in Appeal Case No. GST/PTC-09/20-21 (Annexure-5) and the order dated 02.03.2020 passed by the Respondent No. 5 namely the Deputy Commissioner of State Tax, Patna Central Circle, Patna West, in GSTIN – 10AAETS1637B2Z4 (Annexure-4);

(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 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) The Assessing Authority shall examine the issue of exemption, statutory in nature, as is given by the petitioner;

(l) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(m) 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;

(n) The Assessing Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

(o) Liberty reserved to the petitioner to challenge the order, if required and desired;

(p) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(q) 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;

(r) We have not expressed any opinion on merits and all issues are left open;

(s) 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.

To the above extent, judgment dated 08.07.2021 passed in the instant petition is modified.

Let a copy of this order be kept, both on the digital as also the hard file.

(Sanjay Karol, CJ)

(S. Kumar, J)

Amrendra/PKP-

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