

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11073 of 2021

M/s shiv Krishna Enterprises a proprietorship concern, having its registered office at Sanjay Cinema Road, Brahmapura, Behind Mandap Vibah Bhawan, P.s.- Brahmapura, Distt.- Muzaffarpur, Bihar-842003, through its Proprietor Mr. Arun Kumar Sinha, Male, aged about 74 years, Son of Late K. K. Prasad, Resident of Shiv Krishna Niwas, Sanjay Cinema Road, Mandap Gali, Brahmapura, M.I.T, P.s.- Bahmpura, Distt.- Muzaffarpur, Bihar-842003

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner, State Taxes, Government of Bihar, Patna
2. The Commissioner, Sate Taxes, Bihar, Patna
3. The Additional Commissioner of State Tax (Appeals), Muzaffarpur, Bihar
4. The Joint Commissioner of State Taxes, West Circle, District- Muzaffarpur
5. The Assistant Commissioner of State Taxes, West Circle, District- Muzaffarpur

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Satyabir Bharti, Advocate Mrs. Prachi Pallavi, Advocate
For the Respondent/s	:	Mr. Pawan Kumar, AC to AG

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):

“1(i) Issuance of a writ of certiorari or any other appropriate writ, order or direction, quashing the impugned order dated 09.01.2020 passed under Section 74(1) of the Bihar Goods & Service Tax Act, 2017 (hereinafter referred to as the “BGST Act”) for



the period April, 2019- November, 2019 (Annexures-1, page 19), by which the respondent no.5, namely the Assistant Commissioner of State Taxes, West Circle, District Muzaffarpur, has imposed on the petitioner tax, penalty with interest, in a procedure unknown to the provisions with respect to the non-filing of returns as provided in the Bihar Goods and Services Tax Act (“Act”), 2017 and the circulars issued thereunder;

(ii) Issuance of a writ of certiorari or any other appropriate writ, order or direction, quashing the impugned order dated 10.02.2020 passed under Section 74 of the Bihar Goods & Service Tax Act, 2017 for the same period i.e., April, 2019- November, 2019 (Annexures-3, page 30), by which the respondent no.5, namely the Assistant Commissioner of State Taxes, West Circle, District Muzaffarpur, has reimposed on the petitioner, tax penalty with interest for the same period, in disregard to the established procedure to be followed in cases of non filing of returns;

(iii) Issuance of a writ of certiorari or any other appropriate writ, order or direction, quashing the impugned order dated 06.03.2020 (Annexure-4, page 31), passed under Section 107 of the Bihar goods and Service Tax Act, 2017 (“Act”), by which the respondent no.3, namely the Additional Commissioner of State Taxes (Appeals), West Circle, District Muzaffarpur, has dismissed the appeal of the petitioner in disregard to the provisions and procedure as provided in the Bihar goods and Services Tax Act, 2017 (“Act”) pertaining to non-filing of returns and hence is liable to be quashed;



(iv) To direct the respondents not to take any coercive action against the petitioner during the pendency of the present writ application;

(v) Issuance of any other writ(s), order(s), or direction(s) as may be deemed fit and proper by this Hon'ble Court.”

It is brought to our notice that vide impugned order dated 09.01.2020 (Annexure-3), passed by respondent no.3, namely the Joint Commissioner of State Taxes, West Circle, District Muzaffarpur, the petitioner has been imposed tax penalty with interest and vide order dated 26.08.2019 (Annexure-5), passed by respondent no.3, the Joint Commissioner of State Taxes, West Circle, District Muzaffarpur, the petitioner has been re-imposed tax penalty with interest.

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 09.01.2020 (Annexure-3), passed by respondent no.3, namely the Joint Commissioner of State Taxes,



West Circle, District Muzaffarpur, as also the order dated 26.08.2019 (Annexure-5), passed by respondent no.3 the Joint Commissioner of State Taxes, West Circle, District Muzaffarpur;

(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) 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 stands 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)

PKP/Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

