IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11004 of 2021

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M/s Gopal Enterprises a Proprietorship Firm Having its Place of Business at Shiv Mandir Chowk, Bara bazar, Katihar-Bihar-854105 through its Proprietor namely Kailash Kumar Bathwal male aged Cbout 68 Years Son of Late Shambhu Prasad Bathwal resident of Bara Bazar, Nagar Nigam Katihar.

... ... 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), Purnea Division, Purnea.
3. The Assistant Commissioner of State Taxes, Katihar Circle, Katihar (October 2019 to March 2020)

... ... Respondent/s

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Appearance :

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

"1. (a) For issuance of a writ in the nature of certiorari for quashing of the order dated 07.01.2021 passed and issued 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 26.02.2021 passed by the respondent number 2 and the demand issued in form GST APL -04 whereby the appeal preferred by the petitioner against the original order dated 07.01.2021 has been rejected summarily and without any consideration of the facts and materials placed on record and grounds urged in the memorandum of appeal filed by the petitioner;

(c) For holding and a declaration that the impugned order dated 07.01.2021 passed by the respondent No. 3 is beyond the scope of show cause notice dated 09.12.2020 and therefore without jurisdiction and violative of principles of natural justice as the petitioner has not been afforded adequate opportunity of hearing on particular issues of facts borne in mind by the respondent number 3 while passing the impugned order dated 07.01.2021;

(d) For further holding and a declaration that the impugned order dated 26.02.2021 passed by the respondent number 2 as appellate authority is quite nonspeaking and in teeth of the requirements of section 107(11) and (12) of the Bihar act 2017 as he has utterly failed in exercising his jurisdiction vested in him as first appellate authority in spite of all factual materials brought on record and grounds of appeal urged by the appellant while challenging the order of assessment dated 07.01.2021;

(e) 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 26.02.2021 (Annexure-8) passed by the Respondent No. 2 namely the Additional Commissioner of State Taxes (Appeals) Purnea Division, Punea in Appeal No. AD1002210002011, the appeal of the petitioner against the order dated 07.01.2021 (Annexure-6) passed by the Respondent No. 3 namely Assistant Commissioner of State Taxes, Katihar Circle, Katihar, has been rejected.

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 impugned order dated 26.02.2021 (Annexure-8) passed by the Respondent No. 2 namely the Additional Commissioner of State Taxes (Appeals) Purnea Division, Punea in Appeal No. AD1002210002011, as also the order dated 07.01.2021 (Annexure-6) passed by the Respondent No. 3 namely Assistant Commissioner of

State Taxes, Katihar Circle, Katihar;

(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) 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)

PKP/Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	