IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9769 of 2020

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M/s SR Electricals Having its office at Usha Complex, Ground Floor, Opp. ANS College, NH-31, Barh, Bihar, 803213 through its Proprietor, Ranbir Singh, aged about 63 years (M), Son of Basudev Singh, Residing at 84, Sikandarpur, Sangramapur, Areraj, P.O. and P.S.- Areraj, East Champaran, Bihar- 845411.

... ... Petitioner/s

Versus

1. The State of Bihar Through the Secretary, Commercial Taxes, Govt. of Bihar, Patna.
2. The Joint Commissioner of State Tax Bhagalpur Circle, Bhagalpur, Bihar Office of the Joint Commissioner of State Tax, Bhagalpur Circle, Bhagalpur, 812001.
3. The Commissioner of State Tax Patna, Bihar.
4. The NTPC Limited Eastern Regional Headquarter-1, 2nd Floor, Lok Nayak Jayprakash Bhawan, Fraser Road, Dak Bunglow Chowk, Patna, Bihar-800001.
5. State Bank of India Bhagalpur, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Brisketu Sharan Pandey
For the Respondent/s	:	Mr.Lalit Kishore (Ag)

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

Date : 27-01-2021

Petitioner has prayed for the following relief(s):

> “(i) For Issuing a writ of mandamus or any other appropriate writ quashing/ setting aside the summary best-judgment assessment orders dated 14.09.2019 & 12.10.2019 (Annexure P/2 Series) passed under Section 62 of the CGST Act, 2017 for the Months of July 2019 and August 2019 and

consequently the recovery notices dated 04.03.2020 (Annexure P/6 Series) issued in Form DRC-13 to Respondents No. 4 and 5, under Section 79 of the CGST Act, 2017, which recovery has kept in abeyance on basis of the direction given by Office of the Advocate General, Bihar, dated 17th March, 2020 and/or

(ii) For issuing writ of mandamus and thereby directing the Respondents to refund sum of Rs.59,810/- and any such amount which has been recovered from the Electronic Cash ledger of the petitioner by the Respondents as CGST/SGST after the assessment order dated 14.04.2019 in relation to July 2019 for F.Y. 2019-20.

(iii) For issuing writ of mandamus and thereby directing the Respondents to refund sum of Rs.4,66,750/- which has paid under protest by the petitioner to get his bank account functional. Payment was made on 20.03.2020 following the instruction given by the respondent for revoking the bank attachments relation to July 2019 for F.Y. 2019-20.

(iv) For issuing writ of mandamus and thereby directing the Respondents to refund sum of Rs.4,09,546/- which has paid under protest by the petitioner to get his bank account functional Payment was made on 20.03.2020 following the instruction given by the respondent for revoking the bank attachments relation to August 2019 for FY. 2019-20.

(v) For issuance of appropriate writ directing the respondents to adjust the amount and reassess keeping in view the fact thus Petitioner has deposited excess deposited against the monthly tax liability for the month of July 2019 wherein already i.c. liability in excess i.e. amount worth Rs.17,40,327/- (with break-up of Rs.6,71,537/- as SGST, Rs.6,71,537/- as CGST, with late fine of Rs.2500/- and Rs.2500/- as late fee paid for delay in filing of the return; further Rs.3,92,253/- has been paid as IGST) has been paid against actual liability of Rs. 17,35,527/- and the return in Form-3B has been filed with late fine and later on, due to delayed in filling of GSTR-3B of July-19, the respondent has served a notice in DRC-07 Ref. No. ZA100220026364G dated 25-02-2020, has also been paid by the petitioner on 17-03-2020. The respondent has given this demand notice for interest of Rs. 2,83,094/- (Rs. 36,312/- IGST, Rs. 1,23,391/- CGST & Rs. 1,23,391/- SGST for the period of May-19 to Aug-19) due to the petitioner's late GSTR-3B filing of the same month which the respondent had already assessed under section 62 of the Central Goods and Services Tax Act,2017, the order of summary best-judgment assessment orders.

(vi) For issuance of appropriate writ directing the respondents to adjust the amount and reassess keeping in view the fact thus Petitioner has deposited excess against the monthly tax liability for the month of August 2019 wherein already i.e. liability in excess i.e. amount worth Rs.14,00,948/- (with break-up of Rs.4,31,814/- as

SGST, Rs.4,31,814/- as CGST, with late fine of Rs.2,600/- and Rs.2,600/- as late fee paid for delay in filing of the return; further Rs.5,32, 1 20/- has been paid as IGST) has been paid against the actual liability of Rs. 13,95,748/- and the return in Form-3B has been filed with late fine and later on, due to delayed in filling of GSTR-3B of Aug-19, the respondent has served a notice in DRC-07 Ref. No. ZA100220026364G dated 25-02-2020, has has also been paid by the petitioner on 17-03-2020. The respondent has given this demand notice for interest of Rs. 2,83,094/- (Rs. 36,312/-1GST, Rs.1,23,391/- CGST & Rs. 1,23,391/-SGST for the period of May-19 to Aug-19) due to the petitioner's late GSTR-3B filing of the same month which the respondent had already assessed under section 62 of the Central Goods and Services Tax Act,2017, the order of summary best-judgment assessment orders.

(vii) For issuance of appropriate direction including the mandamus directing the respondents to pass fresh assessment order for the period until February 2020 if any additional liability/ discrepancy found after scrutiny of the return filed u/s 61 since the petitioner has already filed all his monthly returns and as per the petitioner there is no outstanding liability till February 2020.

(vii) For issuing appropriate directions including the writ of mandamus preventing the respondents from taking any coercive step including attachment of the petitioner until the pendency of the present writ application.

(ix) Pass any such other order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

According to the petitioner, no amount is due and payable and the order of attachment (Annexure-P/6 series) dated 4th of March, 2020 stands issued without application of mind. The order is *ex facie* illegal. Also under similar circumstances with respect to another assessment, the State was electrified with the withdrawal of similar impugned order.

Shri Kumar Manish, learned counsel for the State, invites our attention to an order passed by this Bench which reads as under;

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

“a) For issuance of a writ in the nature of certiorari for quashing of an appellate order dated 05.03.2020 issued vide memo number 51 Bhagalpur whereby the appeal preferred by the petitioner has been rejected;

b) For issuance of a writ in the nature of certiorari for quashing of the ex parte order of assessment dated 14.09.2019 issued vide reference number 690 in form GST ASMT- 13 by the Respondent No. 3.

c) For holding and a declaration that once the petitioner has already filed a statutory return in form GSTR 3B for the month of July 2019, the impugned order of assessment dated 14.09.2019 would stand merged with the said return insofar as the actual figures of purchase, sale and liability of tax admitted and paid by the petitioner is concerned;

d) For further holding and a declaration that the determination of tax and interest liability under section 62 of the Goods And Services Tax Act, 2017 (hereinafter referred to as “the act” for short) is based on absolute presumption of figures and cannot be a substitute for actual figures of purchase, sale, tax liability admitted by the petitioner in the return for the tax period in question;

e) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case.”

Petitioner, inter alia, has assailed the order dated 5.3.2020 passed by Additional Commissioner of State Taxes (Appeal), Bhagalpur Division, Bhagalpur, in Appeal Case No. BHGST 07/19-20, on the ground that contentions raised in the appeal, more specifically qua applicability of the provisions of Sections 16, 37, 39, 44 and 62 of the Central Goods and Services Tax Act, 2017 (hereinafter to be referred as ‘the Act’), have not been considered at all.

It is also brought to our notice that the Tribunal envisaged under the provisions of the said Act has yet not been constituted, prompting the petitioner to initiate the instant proceedings instituted under Article 226 of the Constitution of India.

Having heard learned counsel for the parties, we are of the considered view that in the attending facts and circumstances, it would be only more appropriate, as is also so submitted by Shri Gautam Kumar Kejriwal, learned counsel for the petitioner, that the petitioner approaches the appellate authority highlighting the issues raised before this Court, as also pointing out the errors apparent on the face of record, if any, enabling the authority to reconsider the petitioner's case based on the material so placed.

Shri Pawan Kumar, learned counsel appearing for the State/authority, states that petitioner failed to exercise his statutory right as envisaged under Section 62 of the Act, leaving no option with the authority to pass the order.

Responding to the same, Shri Kejriwal, learned counsel, argues that even after passing of the order under Section 62 of the Act, petitioner has a right in law, to take recourse to the provisions, prior thereto.

Well, on merits, we do not express any opinion and leave it to the wisdom of the appellate authority to consider all these issues, to the attending facts.

We are inclined to pass such an order, more so when we notice that such pleas were taken not for the first time before this Court but before the appellate authority.

As such, as jointly prayed for, present petition is being disposed of in the following terms:-

(a) Petitioner shall appear before the appellate authority, either through physical or digital mode on 30.11.2020 at 10.30 A.M.;

(b) The appellate authority shall consider all aspects and take a decision, preferably within a period of two months thereafter;

(c) All issues are left open for we have not expressed any opinion on merits;

(d) It shall be open to the appellate authority to pass a fresh order as per law if so required.

(e) Till such time decision is taken by the authority, no coercive action for recovery of the amount shall be taken against the petitioner.

No other submission is made on behalf of either parties.

Interlocutory application, if any, shall also stand disposed of.

Petition stands disposed of."

Learned counsel has no objection to similar order being passed also in the instant case.

As such, we quash and set aside the order of attachment (Annexure-P/6 series) dated 4th of March, 2020 making the directions issued in the case of Lalan Kumar Vs. The State of Bihar & Ors. (supra) applicable *mutatis mutandi* in the instant case, adding further that petitioner shall appear before the assessing officer on 26.02.2021 at 10:30 a.m.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	30.01.2021
Transmission Date	