

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14475 of 2021

Rambabu Singh, a proprietary concern having its office at Basauli, Basauli, Muzaffarpur, through its proprietor, Rambabu Singh, (Male) (aged about 49 years), Son of Late Mahanth Singh, resident of Ward No. 2, East of Basauli Chowk, Basauli, Muzaffarpur, P.S. Kurhani, District - Muzaffarpur, Bihar.

... .. Petitioner/s

Versus

1. State of Bihar through the Commissioner of State Tax, having its office at Vikas Bhawan Bailey Road, Patna.
2. Addl. Commissioner of State Tax (Appeal), Tirhut Division, Muzaffarpur.
3. Deputy Commissioner of State Tax, East Circle, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.D.V.Pathy, Advocate
For the Respondent/s : Mr.Vivek Prasad (GP 7)

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 : 26-08-2021

Petitioner has prayed for the following relief(s):

- “i) the notice dated 03.02.2020 (as contained in Annexure-1) issued by the respondent no.2 quantifying tax, interest and penalty amounting to ₹ 9,39,808 under Section 74 of the Bihar Goods and Services Tax Act, 2017 (hereinafter called the BGST Act) for the period April 2019 to September 2019 be quashed.
- ii) the notice dated 03.02.2020 (as contained in



Annexure-2) issued by the respondent no.2 quantifying tax, interest and penalty amounting to ₹ 9,39,808 under the BGST Act for the period April 2019 to September 2019 in Form DRC-01 be quashed.

iii) the order dated 05.03.2020 (as contained in Annexure 4) passed by the respondent no.2 quantifying tax, interest and penalty amounting to ₹ 8,39,164 under the BGST Act for the period April 2019 to September 2019 in Form GST DRC – 07 without passing a speaking order be quashed.

iv) the order dated 05.03.2020 (as contained in Annexure-5) passed by the respondent no.2 quantifying tax, interest and penalty amounting to ₹ 8,39,164 under the BGST Act for the period April 2019 to September 2019 in 74(9) of the BGST Act 2017 without passing a speaking order be quashed.

v) the order dated 28.12.2020 (as contained in Annexure -7) passed by the respondent no. 2 dismissing the appeal in limine on the solitary ground of delay in filing the appeal be quashed.

vi) for granting any other relief (s) to which the petitioner is otherwise found entitled to.”

It is brought to our notice that vide impugned order dated 28.12.2020 passed by the Respondent No. 2 namely the Additional Commissioner of State Tax (Appeal), Tirhut Division, Muzaffarpur, in Appeal Case No. GST/MZ-46/2020-21, the appeal of the petitioner against the order dated 05.03.2020 passed by Respondent No. 3, namely Deputy Commissioner of State Tax,



East Circle, Muzaffarpur in GSTIN 10BBGPS6340R1Z9, under Section 74(9) of GST Act, 2017 pursuant to notice dated 03.02.2020 issued under Section 74 of the Bihar Goods and Service Tax Act, 2017 Act, for the tax period April 2019-September, 2019 in Form GST DRC-07, has been rejected merely on the grounds of being barred by limitation.

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 28.12.2020 passed by the Respondent No. 2 namely the Additional Commissioner of State Tax (Appeal), Tirhut Division, Muzaffarpur, in Appeal Case No. GST/MZ-46/2020-21; the order dated 05.03.2020 passed by Respondent No. 3, namely Deputy Commissioner of State Tax, East Circle, Muzaffarpur in GSTIN 10BBGPS6340R1Z9, under Section 74(9) of GST Act, 2017 and notice dated 03.02.2020 issued under Section 74 of the Bihar Goods and Service Tax Act, 2017 Act, for the tax period April 2019-September, 2019 in Form GST DRC-07;

(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 25th October, 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 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)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	01.09.2021
Transmission Date	

