IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15069 of 2021

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Shalini Singh, W/o Dhananjay Kumar Singh, R/o Village- Bhakura, P.O.- Bhakura, Lauhar Pharna, District- Bhojpur, Pin- 802315.

... ... Petitioner/s

Versus

1. The State of Bihar Through the Commissioner-cum- Principal Secretary, Commercial Tax Department, Government of Bihar, Patna.
2. The Commissioner-cum- Principal Secretary, Commercial Tax Department, Government of Bihar, Patna.
3. The Additional Commissioner of State Tax (Appeal) Patna West Division, Patna.
4. The Deputy Commissioner of State Tax Shahabad Circle, Ara.
5. The Assistant Commissioner of State Tax Shahabad Circle, Ara.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Anurag Saurav, Advocate

For the Respondent/s : Mr.Vivek Prasad, GP-7

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

Date : 02-09-2021

Petitioner has prayed for the following relief(s):

i) For issuance of writ in the nature of Certiorari quashing the order dated 06.03.2020 issued vide Case ID No. 121 for Tax Period Nov -2018 (FY - 2018 19) by DCST, State Tax, Sahabad Circle, Ara under section 74(9) of BGST Act whereby and where under an amount of Rs. 2,58,948/-has been imposed without providing a fair opportunity of hearing by way of not allowing to submit a copy of agreement for considering the rate of tax imposed to the petitioner and without finding the nature of work contract, tax was imposed.

ii) For issuance of an appropriate order/direction in the nature of *Certiorari* quashing the Demand Notice bearing Reference No. ZA100320009302P dated 07.03.2020 under Rule 142(5) in the form of GST DRC-07 whereby and where under petitioner was intimated to deposit the tax amount of Rs. 2,58,948/- for the month of Nov-2018(FY-2018-19).

iii) For issuance of writ in the nature of Certiorari for setting aside order dated 23.01.2021 passed in Appeal bearing reference no. ZD100121020423K by Additional Commissioner of State Tax (Appeal), Patna West Division, Patna whereby and where under the appeal filed by the petitioner has been rejected on the ground of delay in submission of appeal.

iv) For issuance of an appropriate order/direction in the nature of *Mandamus* directing the Respondent Authorities to release the bank account of the Petitioner bearing Account No. 1125102000002677, IDBI Bank, Aashiana Nagar Branch forthwith which has been authoritatively attached by the Respondents without passing a written legal order whatsoever and is in contravention of Section 107 of the BGST Act;

v) For issuance an appropriate order/direction in the nature of *Mandamus* directing the Respondent Authorities to refund the entire tax amount realized from the bank account of the petitioner against the above mentioned Demand Notice.

vi) For issuance an appropriate order/direction in the nature of *Mandamus* directing the Respondent Authorities not to take any coercive action against the Petitioner until the disposal of this writ petition;

vii) For any other relief or reliefs for which the Petitioners maybe found entitled to in the facts and circumstances of thiscase;

viii) Or may pass any other suitable order/orders which your Lordships may deem fit and proper in facts and circumstances of this case.

It is brought to our notice that vide impugned order dated 23.01.2021 passed by the Respondent No. 3 namely Additional Commissioner of State Tax in Reference No. ZD100121020423K, the appeal of the petitioner against the order dated 06.03.2020 issued vide Case ID No. 121 for Tax Period June-2018 (FY 2018-19) by the Respondent No. 4 namely The Deputy Commissioner of State Tax, Shahabad Circle, Ara, in GSTIN-10AWRPS0288H1ZA and Demand Notice dated 07.03.2020 in Reference No. ZA100320009302P has been rejected merely on the grounds of being barred by limitation. Both the orders were ex parte in nature.

In our considered view, the delay stands sufficiently explained on account of COVID restrictions.

Shri Anurag Saurav, learned counsel for the petitioner states that the entire amount so quantified vide demand notice dated 07.03.2020 stands recovered in terms of order dated 11.01.2021 (Annexure-6) by the Revenue.

Statement accepted and taken on record.

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 23.01.2021 passed by the Respondent No. 3 namely Additional Commissioner of State Tax in Reference No. ZD100121020423K, order dated 06.03.2020 issued vide Case ID No. 121 for Tax Period June-2018 (FY 2018-19) by the Respondent No. 4, namely The Deputy Commissioner of State Tax, Shahabad Circle, Ara, in GSTIN-10AWRPS0288H1ZA and Demand Notice dated 07.03.2020 in Reference No. ZA100320009302P;

(b) The deposit made 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;

(c) 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.

(d) Petitioner undertakes to appear before the Assessing Authority on 11th October, 2021 at 10:30 A.M., if possible through digital mode;

(e) The Assessing Authority shall decide the case on merits after complying with the principles of natural justice;

(f) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

(g) During pendency of the case, no coercive steps shall be taken against the petitioner.

(h) The Assessing Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(i) 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;

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

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

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

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

(n) 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;

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

(p) 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)

Sujit/-Ashwini/

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	