

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15038 of 2021

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Rajendra Prasad Chaurasia, S/o Bano Prasad Chaurasia R/o Flat No. 404, S.S Enclave, Ashiana Digha Road, Opp. Rakhi Complex, Rukanpura, Patna-800014, Proprietor at M/s Radha Krishna Enterprises having its office at GR, Indrapuri Colony, East of Ramnagri More, Ashiana Digha Road, Patna.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Commissioner, Commercial Tax Department, Government of Bihar, Patna.
2. The Commissioner, Commercial Tax Department, Government of Bihar, Patna.
3. The Additional Commissioner of State Tax (Appeal), Patna West Division, Patna.
4. The Assistant Commissioner of State Tax, Patna Central Circle, Patna West, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anurag Saurav, Advocate
Mr. Priyajeet Pandey, Advocate
Mr. Abhinav Alok, 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)

Date : 02-09-2021

The 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 for the period April-September -2019 (FY - 2019-20) by ACST, State Tax, Patna Central Circle, Patna West, Patna under section 74(1) of BGST Act whereby and where under an amount of Rs. 3,81,386/-has been imposed without providing a fair opportunity of hearing and the said order was passed ex-parte and while passing the order, no show cause notice was served to the petitioner.
- ii) For issuance of an appropriate order/direction in the nature of *Certiorari* quashing the Demand Notice bearing Reference No. ZA100320013962B dated 09.03.2020 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. 3,81,386/- for the month of April-September - 2019(FY-2019-20).
- iii) For issuance of writ in the nature of *Certiorari* for setting aside order dated 13.02.2021 passed in Appeal bearing reference no. ZD1002210093491 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 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;
- v) For any other relief or reliefs for which the Petitioners maybe found entitled to in the facts and circumstances of this case;
- vi) 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 13.02.2021 passed by the Respondent No. 3 namely Additional Commissioner of State Tax (Appeal), Patna, West Division, Patna in Appeal Case No. GSTIN/Temp ID/UIN-



10AGWPC6254A1ZU, the appeal of the petitioner against the order dated 06.03.2020 passed by the Respondent No. 4 namely Assistant Commissioner of State Tax, Patna Central Circle, Patna West, Bihar in GSTIN-10AGWPC6254A1ZU and summary of order dated 09.03.2020 in Reference No. ZA100320013962B 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 Saurabh, learned counsel for the petitioner, states that the entire amount as quantified vide order dated 06.03.2020 (Annexure-1) would be deposited before the next date of hearing to be fixed before the authority.

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 13.02.2021 passed by the Respondent No. 3 namely Additional Commissioner of State Tax (Appeal), Patna, West Division, Patna in Appeal Case No. GSTIN/Temp ID/UIN-10AGWPC6254A1ZU and the order dated 06.03.2020 passed by the Respondent No. 4 namely Assistant Commissioner of State Tax, Patna Central Circle, Patna West, Bihar in GSTIN-10AGWPC6254A1ZU as well as summary of order dated 09.03.2020 in Reference No. ZA100320013962B.

(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 before the next date.

(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 21.10.2021 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)

Sujit/-Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	10.09.2021
Transmission Date	

