IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15154 of 2021

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Sanjay Kumar Jha Son of Naresh Chandra Jha Resident of Nayanagar Ward No. 14, P.S. - Supaul, District- Supaul.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Commercial and Tax, Bihar, Patna.
3. The Commissioner State Tax, Bihar, Patna.
4. The Additional Commissioner State Tax, Purnea.
5. The Deputy Commissioner State Tax, Supaul.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rajesh Kumar Sinha, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (SC 11)

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 : 09-09-2021

Petitioner has prayed for the following relief(s):

i. For quashing/setting a side the impugned order as contained in memo no. 355,356,357,358,359,360 and memo no. 361 dated 26.02.2021, passed by the Additional Commissioner (Appeal) State Tax (Appellate Authority) Purnea Division, Purnea whereby and whereunder the appeals filed on behalf of the petitioner have been rejected only on the ground of limitation which is not sustainable in the eye of law.

ii. Further for quashing the demand as contained in reference no. ZA100320015253M, ZA100320015256G, ZA100320015259A, ZA100320015262N, ZA1003200152699, ZA100320015273K and ZA100320015275G dated 11.03.2020 issued by Mr. Rajeev Kumar Jha, Deputy Commissioner of State Tax, Supaul, Purnea, Bihar, whereby and whereunder demand for GST @ 12% have been made with fine and penalty without giving opportunity of hearing which are not sustainable and fit to be set aside.

iii. Further for a direction to the respondent authority to defreeze/ behold/un-hold the Account No.-31004701070, IFSC Code-SBIN0000190, State Bank of India, Supaul which has been hold by the respondent authority on the ground of non-payment of their demand under G.S.T.

iv. To grant any other relief(s) for which the petitioner is entitled to get in the eye of law.

It is brought to our notice that vide impugned orders dated 26.02.2021 passed by the Respondent No. 4 namely the Additional Commissioner of State Tax (Appeal), Purnea Division, Purnea contained in Memo Nos.355, 356, 357, 358, 359, 360 and 361 in different appeal numbers (Numbers not legible), the appeals of the petitioner against the orders dated 11.03.2020 passed by Respondent No. 5, namely the Deputy Commissioner, State Tax, Supaul in Reference Nos.ZA100320015253M, ZA100320015256G,

ZA100320015259A, ZA100320015262N, ZA1003200152699, ZA100320015273K and ZA100320015275G for different tax periods, have 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.

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 orders dated 26.02.2021 passed by the Respondent No. 4 namely the Additional Commissioner of State Tax (Appeal), Purnea Division, Purnea contained in Memo Nos.355, 356, 357, 358, 359, 360 and 361 in different appeal numbers (Numbers not legible), and the orders dated 11.03.2020 passed by Respondent No. 5, namely the Deputy Commissioner, State Tax, Supaul in Reference Nos.ZA100320015253M, ZA100320015256G, ZA100320015259A, ZA100320015262N, ZA1003200152699, ZA100320015273K and ZA100320015275G;

(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 in each case. 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 in each case. 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 08.10.2021 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 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)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	17.09.2021
Transmission Date	