IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16008 of 2021

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Pankaj Kumar, Son of Sunil Kumar Chaudhary, Resident of P.O. Ghorghut Mal, P.S. Sultanganj, District- Bhagalpur through its authorized representative namely Shri Vikas Saraf, male, aged about 41 years, Son of Late Bijay Agrawal, Resident of Bekapur, Shivaji Chowk, Munger- 811201

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Assistant Commissioner of State Taxes, Bhagalpur Circle, Bhagalpur, (August- 2019).

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Gautam Kumar Kejriwal, Advocate

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

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

Date : 16-09-2021

The petitioner has prayed for the following relief/s :-

a) For issuance of a writ in the nature of certiorari for quashing of the ex parte order of assessment dated 21.10.2019 and a summary of order in form GST DRC – 07 dated 23.10.2019 passed and issued by the respondent number 2 under section 62 of the Bihar Goods And Services Tax Act 2017 (hereinafter referred to as the Bihar act 2017 for short);

b) For holding and a declaration that once the petitioner has filed the return in form GST R – 3B for the month of August 2019 and paid the admitted tax, the impugned order of assessment made under section 62 of the Bihar act 2017 and demand of tax and interest on the basis thereof loses its existence as the tax liability for the same period has already been discharged by the petitioner;

c) For further holding and a declaration that once the petitioner has already discharge the tax liability for the month of August 2019 by filing a valid return along with late fine, the respondent number 2 cannot enforce and execute the impugned order of assessment as any such action would constitute a case of double taxation for a particular period which is impermissible in law;

d) For holding and a declaration that the statutory return in form GSTR 3B filed by the petitioner for the month of August 2019 is valid and the declaration made therein by the petitioner holds primacy over the figures determined by the respondent number 2 in terms of the best judgement assessment made under section 62 (1) of the Bihar act 2017;

e) For further holding and a declaration that section 16 (2), 16 (4), 39 read with section 46 and 47 of the act permit filing of a monthly return after due date and imparts all characteristics of a return valid and acceptable in terms of law;

f) For further holding a declaration that the nature of jurisdiction conferred under section 62 (1) of the act to make a best judgement assessment of an assessee having defaulted in filing a monthly return is not penal in nature rather it is a discretionary power exerciseable to fill up the gap in the records maintained for the sale purchase turnover, tax liability admitted and paid and input tax credit to which an assessee may be entitled to for a particular month and therefore once a valid return is filed by the assessee even after due date but with due compliance of section 47 of the act, the best judgement assessment made under section 62 (1) shall have to be recalled and the return so filed would be required to be considered by the assessing authority;

g) For further holding and a declaration that section 62 (2) of the act is directory and not mandatory and therefore any return validly filed in terms of section 39 read with section 47 of the act shall replace the best judgement assessment made under section 62 (1) irrespective of the bar of limitation prescribed under section 62 (2) of the act;

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

The instant petition has been filed for quashing of the order dated 21.10.2019 passed by the Respondent No. 2 namely Assistant Commissioner of State Taxes, Bhagalpur Circle, Bhagalpur, in GSTIN-10BNHPK6415J1Z7 and Summary of Order dated 23.10.2019 in Reference No. ZA101019003846X. Both the orders were *ex parte* in nature.

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 21.10.2019 passed by the Respondent No. 2 namely Assistant Commissioner of State Taxes, Bhagalpur Circle, Bhagalpur, in GSTIN-10BNHPK6415J1Z7 and Summary of Order dated 23.10.2019 in Reference No. ZA101019003846X**;**

(b) The petitioner undertakes to deposit ten per cent of the amount of the demand raised before the Assessing Officer. This shall be done within four weeks.

(c) 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;

(d) 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.

(e) Petitioner undertakes to appear before the Assessing Authority on 28th of October, 2021 at 10:30 A.M., if possible through digital mode;

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

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

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

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

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

(k) 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;

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

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

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

(o) 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;

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

(q) 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)

Ashwini/Sujit/

AFR/NAFR	
CAV DATE	
Uploading Date	17.09.2021
Transmission Date	