IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2158 of 2021

Suman Kumar, son of Mahendra Prasad Singh, Resident of Radha Rani Sinha Road, Aadampur, Jagdishpur, Bhagalpur- 812001.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Joint Commissioner of State Taxes, Bhagalpur Circle, Bhagalpur.
3. The Assistant Commissioner of State Taxes, Bhagalpur Circle, Bhagalpur.

... ... Respondent/s

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

Date : 03-03-2021

Petitioner has prayed for following relief(s) :

a) For issuance of a writ in the nature of certiorari for quashing of the *ex parte* order of assessment dated 14.09.2019 issued vide reference number 673 in form GST ASMT 13 by the respondent number 3;

b) For holding and a declaration that the statutory return in form GSTR 3B filed by the petitioner for the month of May 2019 is valid and the declaration made therein by the petitioner holds primacy over the figures determined by the respondent number 3 in terms of the best judgment assessment made under Section 62(1) of the Goods And Services Tax Act, 2017 (hereinafter referred to as “the act” for short);

c) For further holding and a declaration that Section

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16(2), 16(4), 39 read with Section 46 and 47 of the act permits filing of a monthly return after due date and imparts all characteristics of a return valid and acceptable in terms of law;

d) For further holding a declaration that the nature of jurisdiction conferred under Section 62(1) of the act to make a best judgment 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 judgment 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;

e) 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 judgment assessment made under Section 62(1) irrespective of the bar of limitation prescribed under section 62(2) of the act;

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

Having heard learned counsel for the parties, as also perused the record, we are in agreement with Sri Gautam

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Kejriwal, learned counsel for the petitioner, that the principles of natural justice, in passing the order, stands violated.

Also, we are of the view that the impugned order dated 14.09.2019 passed by the Respondent No. 3, the Assistant Commissioner of Sate Taxes, Bhagalpur Circle, Bhagalpur, needs to be quashed and set aside, for the same to have been passed without following the principles of natural justice. In terms of the impugned order, financial liability stands fastened. Thus, it entails civil consequences, seriously prejudicing the petitioner inasmuch as, without affording any adequate opportunity of hearing or assigning any reason.

Shri Gautam Kejriwal, learned counsel for the petitioner states that without prejudice to the respective rights and contentions of the parties, petitioner is ready and willing to deposit a sum of Rs. 1,50,000/- with the appropriate authority on or before 09.03.2021.

Statement accepted and taken on record.

It stands clarified that deposit of such amount would be without prejudice to the respective rights and contentions of the parties and the order which the authority may pass upon the matter being remanded for consideration afresh.

As such, purely on a limited ground, we quash and set

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aside the impugned order 14.09.2019 passed by the Respondent No. 3, the Assistant Commissioner of Sate Taxes, Bhagalpur Circle, Bhagalpur for the period May, 2019 under Section 62(1) of Bihar Goods and Service Tax Act, 2017, as contained in Annexure-4, with further mutually agreeable directions that- (a) the petitioner shall deposit a sum of Rs. 1,50,000/- with the authority on or before 09.03.2021; (b) the petitioner shall appear before the authority on 09.03.2021 in his office at 10:30 A.M., on which date he shall place on record additional material, if so required and desired; (c) also, further opportunity shall be afforded to the parties to place additional material, if so required and desired; (d) petitioner undertakes to fully cooperate and not take any unnecessary adjournment; (e) the authority shall decide the matter on merits, in compliance of the principles of natural justice, within a period of two months, preferably within this financial year i.e. 31.03.2021; (f) liberty reserved to the parties to take recourse to such remedies as are otherwise available in accordance with law; (g) we have not expressed any opinion on merits and quashed the order only on the ground of violation of principles of natural justice. (h) if necessary, proceedings during the time of current Pandemic [Covid-19] would be conducted through digital mode; (i) needless to add, with the passing of the

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order, if it is eventually found that deposit made by the petitioner is in excess of the amount determined due and payable, the same shall positively be refunded expeditiously as per the provisions of the statute.

The instant petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

sujit/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.03.2021
Transmission Date	

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