IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2095 of 2021
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Bablu Kumar, Aged about 38 years, Male, Son of Shri Hardev Ray, Resident of Bishunpur, Pakari, Pakri, P.S.- Beur, Patna-800002.

-Versus-

1. Union of India through the Secretary (Revenue), Ministry of Finance, Government of India, North Block, New Delhi- 110001;
2. The Goods and Services Tax council, through it's Secretary, 5th Floor, Tower II, Jeevan Bharati Building, Janpath Road, Cannaught Place, New Delhi-110001;
3. The State of Bihar, through it's Secretary, Commercial Tax Department, Vikas Bhawan, Bailey Road, Patna- 800001;
4. The Commissioner of Central GST and Central Excise Patna-I, 3rd Floor, Kendriya Rajaswa Bhawan (Annexe Building), Bir Chand Patel Path, Patna-800001;
5. The Commissioner, Bihar Commercial Tax Department, Government of Bihar, Vikas Bhawan, Bailey Road., Patna-800001;
6. The Additional Commissioner (Appeal), Bihar State GST, Patna West Division, Bikri Kar Bhawan, Anta Ghat, Gandhi Maidan, Patna-800001;
7 . The Assistant Commissioner, Bihar State GST, Patna South: Patna West Circle, Bikri Kar Bhawan, Anta Ghat, Gandhi Maidan, Patna-800001 ;

…………… Respondents

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Appearance :

For the Petitioner/s	:	Mr. Amit Pandey, Advocate Mr. Ashwini Kumar, 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)
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(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 : 28-04-2021

Heard learned counsel for the petitioner and learned counsel for the respondents.

Petitioner has prayed for the following relief(s):

"i) To issue a writ in the nature of certiorari for quashing the Order Reference No. ZD100920007059W dated 29.09.2020 passed by the Additional Commissioner (Appeal), Bihar State GST, Patna West Division, Patna, whereby and where under the Appeal bearing Reference No. AD1008200000580Z dated 26.08.2020 filed against the Order bearing Reference No. ZA100320013372M dated 08.03.2020 passed by the Assistant Commissioner, Bihar State GST, Patna South: Patna West Circle under Section 107 of the Central/ Bihar GST Act, 2017 was rejected on the ground of non-submission of certified copy of the Order appealed against without grant of any opportunity of being heard and without taking into reference the certified copy of the Order appealed against which was submitted to the office of the said Appellate Authority under Registered Post on 28.08.2020; And/or

ii)To issue a writ in the nature of certiorari for quashing the Order bearing Reference No. ZA100320013372M dated 08.03.2020 passed by the Assistant Commissioner, Bihar State GST, Patna South: Patna West Circle under Section 74 of the Central/ Bihar GST Act, 2017, whereby and where under a demand of Rs 47,436/- each has been confirmed as Central GST and State GST along with interest of Rs 7,216/- each for Central GST and State GST, and penalty of Rs. 47,436/- each was imposed on the part of Central GST and State GST, without giving any opportunity of being heard on behalf of the petitioner, without supply of documents based upon which the charge of evasion of GST, without providing specific charge for levy of GST, interest and penalty, in utter violation of principles of natural justice and in violation of procedure established by law; and/or

iii) As Ad-interim relief to issue directions to the Assistant Commissioner, Bihar State GST, Patna South: Patna West Circle for not proceeding for the recovery proceedings in terms of the aforesaid Order dated 08.03.2020 till disposal of this Petition; And/or

iv) To grant any other relief or reliefs to which the petitioners are entitled in the facts and circumstances of the case."

The gravamen of the petitioner's submission being that the certified copy of the impugned order as supplied by the authority stands placed on the records of the Appellate Authority, but notwithstanding the same, the appeal stands rejected solely on ground of non-filing thereof.

Having heard learned counsel for the parties, we are of the considered view that the petition can be disposed of on the following mutually agreeable terms:

(a) It is not in dispute that the copy of the order impugned, annexed along with the appeal is the very same copy of the record which stands supplied to the petitioner through digital mode during the time of current Pandemic Covid-19.

(b) The impugned order, Reference No. ZD100920007059W dated 29.09.2020 passed by the Additional

Commissioner (Appeal), Bihar State GST, Patna West Division, Patna [Annexure-P/5] stands quashed and set aside with the petition being disposed of and the matter being remanded to the Appellate Authority for consideration afresh.

(c) Petitioner undertakes to fully cooperate and not take any unnecessary adjournment.

(d) Petitioner agrees to appear before the Appellate Authority i.e. Respondent No. 6, namely, The Additional Commissioner (Appeal), Bihar State GST, Patna West Division, Bikri Kar Bhawan, Anta Ghat, Gandhi Maidan, Patna-800001 on 6^{th} of May, 2021 at 10:30 A.M. through virtual mode.

(e) Sri Vikash Kumar, learned Standing Counsel 11, states that the link for hearing shall be supplied to the petitioner's counsel, namely Shri Amit Pandey. Sri Amit Pandey undertakes to supply particulars of the phone/mobile number and email on which the link is required to be sent. This he shall positively do so to Sri Vikash Kumar within two days.

(f) The Appellate Authority shall decide the appeal on its own merit, in accordance with law. This he shall positively do within a period of two months.

(g) We have not expressed any opinion on the merits of the matter and all issues of facts and law are left open.

(h) Till the decision of the appeal, no coercive action shall be taken against the petitioner. However, it stands clarified that petitioner shall adhere to and comply with all the provisions of the Statute, including the condition of pre-deposit of hearing the appeal, if any.

Petition stands disposed of with the aforesaid observation(s)/direction(s).

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

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/-

AFR/NAFR	
CAV DATE	
Uploading Date	28.04.2021
Transmission Date	