

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17795 of 2021

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M/s K.R. Steel Traders, a proprietorship firm having its place of business near Tiwari Bechar Petrol Pump, Kankar Bagh, Patna-800020 through its proprietor namely Ajit Kumar Jain male aged about 61 Years, Son of Kanhaiya Lal Jain, Resident of Jain Sadan, Govind Mitra Road, Patna - 800004.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes, (Appeal), Patna West Division, Patna.
3. The Joint Commissioner of State Taxes, Patna South Circle, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
For the Respondent/s : Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJAN GUPTA
ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-10-2021

Petitioner has prayed for the following relief(s):

“1(a) For issuance of a writ in the nature of certiorari for quashing of the appellate order dated 16.12.2020 issued vide form GST APL-02 by the respondent no.2 whereby the appeal preferred by the petitioner has been rejected on grounds of delay;



(b) For issuance of a writ in the nature of certiorari for quashing of the order dated 16.08.2019 passed by the respondent No. 3 under section 140 and 73(9) of the Bihar goods and service tax act 2017 (hereinafter referred to as the Bihar act 2017 for short) and summary or order issued vide reference number ZA819002355U in form GST DRC-07 dated 29.08.2019 by the respondent number 3 on grounds of the same being without jurisdiction;

(c) For holding and declaration that the appeal preferred by the petitioner on 10.12.2020 is well within limitation prescribed under section 107 of the Bihar act 2017 in view of the order dated 30.04.2020 and 18.05.2020 passed in C.W.J.C. number 5633 of 2020 by full bench of this honourable court read with the order dated 23.03.2020 passed by honourable Supreme Court in Writ Petition (Civil) No. 3 of 2020;

(d) For further holding and a declaration that the limitation prescribed under section 107 of the act 2017 can be extended under section 5 of the Limitation Act, 1963 and the provisions of the Limitation Act, 1963 shall apply with full force in view of section 29(2) of the said act;

(e) For grant of any other relief or reliefs to which the petitioner is found entitled in the fact and circumstances of this case.”

It is brought to our notice that vide impugned order dated 16.12.2020 passed by Respondent No. 2, namely Additional Commissioner of State Taxes (Appeal), Patna



West Division, Patna, in Reference No. ZD101220015172J (Annexure-5), in Form GST APL-02, the appeal of the petitioner against the order dated 16.08.2019, passed by Respondent No. 3 namely the Joint Commissioner of State Taxes, Patna South Circle, Patna (Annexure-2) and Summary of order in Form GST DRC-07 dated 29.08.2019 passed by Deputy Commissioner of State Tax Patna South, Jurisdiction- Patna South, Patna West, Bihar Patna in Reference No. ZA100819002355U 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.

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 16.12.2020 passed by Respondent No. 2, namely Additional Commissioner of State Taxes (Appeal), Patna West Division, Patna, in Reference No. ZD101220015172J (Annexure-5), in Form GST APL-02, the order dated 16.08.2019, passed by Respondent No. 3 namely the Joint Commissioner of State Taxes, Patna South Circle, Patna (Annexure-2) and Summary of order in Form GST DRC-07 dated 29.08.2019 passed by Deputy Commissioner of State



Tax Patna South, Jurisdiction- Patna South, Patna West,
Bihar Patna in Reference No. ZA100819002355U;

(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 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 15th of November, 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)

(Rajan Gupta, J)

P.K.P./Amrendra

AFR/NAFR	
CAV DATE	
Uploading Date	22.10.2021
Transmission Date	

