IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3820 of 2021

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M/s Vivaan Enterprises through its Proprietor having its office at 1st Floor, M.G. Market, Randhir Prasad Street, Upper Bazar, Ranchi, Jharkhand through its Proprietor namely, Ishan aged about 40 years, son of Late Radheyshyam Prasad, resident of Flat- 301, Sri Ganesh Apartment, Pusp Vihar Harihar Singh Road, P.S.- Bariatu, District- Ranchi, Jharkhand.

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner-cum- Principal Secretary, Commercial Tax Department, Government of Bihar.
2. The Commissioner-cum- Principal Secretary, Commercial Tax Department, Government of Bihar.
3. The Additional Commissioner of State Tax (Appeal) Patna East Division, Patna.
4. The Assistant Commissioner of State Tax, Central Investigation Bureau, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vikash Kumar Pankaj, Advocate
For the Respondent/s	:	Mr. Vivek Prasad, G.P. 7
For the Union of India	:	Dr. K.N. Singh, ASG
		Mr. Anshuman Singh, Advocate

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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 : 01-07-2021

Our attention is invited to the Circular dated 11th of August, 2020, issued by the Government of India, Ministry of Finance, Department of Revenue (State Taxes-I Section), and

Circular dated 27th of October, 2020, issued by the Government of India, Ministry of Finance, Department of Revenue (Central Board of Indirect taxes & Customs) Legal Cell, copy whereof is taken on record.

In view of the same, Union of India be impleaded as Party Respondent No. 5.

Registry to make necessary correction, both on the digital as also the hard file.

Dr. K.N. Singh, learned Additional Solicitor General and Shri Anshuman Singh, Sr. S.C., CGST & CX enter appearance on behalf of the newly added respondents.

Petitioner has prayed for the following relief(s):

> "a. For issuing writ/writs, order/orders thereby quashing the order dated 24.09.2018 (ANNEXURE-2) & subsequent demand order issued in FORM GST DRC-07.
>
> b. For issuing writ/writs, order/orders and directing the Respondents to refund the tax and penalty which has been recovered from the Petitioner by coercing him even when all the taxes were already paid.
>
> c. For issuing writ/writs, order/orders including the directing the Respondents to hear and decide the Appeal preferred by the Petitioner as Case No. -ST/IB(C)-01/18-19 dated 07.01.2019 expeditiously and not to delay it any further.
>
> d. For holding that the order of the assessing

authority is fit to be set aside. The impugned order of penalty passed under the GSTY Act 2017 is completely illegal & arbitrary.

e. For holding that no penalty can be imposed on the petitioner for faults which cannot be attributed to him.

f. For holding that diverting from the route is not an offence under the GST Act and the penalty cannot be imposed for the same.

g. For holding that the right of the petitioner to be heard in the appeal cannot be taken away on the garb of technical glitches.

h. For holding that the learned Assessing Officer has acted beyond the jurisdiction of provisions of the Act and without applying judicious views.

I. For holding that the learned Assessing Officer imposed tax and levied penalty without considering the facts of the instant case, which is arbitrary and illegal, and it is fit to be set aside.

j. For holding that the learned Assessing Officer completely failed to considering there cannot be any intention to evade tax if they taxes have already been paid in full.

k. To pass any other order/orders which it may deem fit in the facts and circumstances of the case and within the ends of equity, justice and good conscience."

It is brought to our notice that vide impugned order dated 26th of March, 2021 passed by the Respondent No. 3

namely The Additional Commissioner of State Tax (Appeal), Patna, East Division, Patna in Appeal Case No. GST/IB(C)-03/2019-20 for the period 2018-19, the appeal of the petitioner against the order dated 24.09.2018 in Form GST MOV-09 vide Order No. 374 (Annexure-2) passed by Respondent No. 4 namely the Assistant Commissioner of State Tax, Central Investigation Bureau, Bihar, Patna has been rejected, without complying with the principles of natural justice. The orders appear to be ex parte in nature.

Learned counsel for the petitioner states that the entire amount in terms of the demand raised by the department stands recovered from the petitioner.

Learned counsel for the Revenue, states that he has no objection if the matter is remanded to the Appellate Authority for deciding the appeal afresh. Also, while considering and deciding the appeal, the ground of delay shall not be taken into account and the appeal shall be decided on merits. Also, during pendency of the appeal, no coercive steps shall be taken against the petitioner.

Statement accepted and taken on record.

Having heard learned counsel for the parties as also perused the record made available, we dispose of the present petition in the following mutually agreeable terms:-

(a) We quash and set aside the impugned order dated 26th of March, 2021 passed by the Respondent No. 3 namely The Additional Commissioner of State Tax (Appeal), Patna, East Division, Patna in Appeal Case No. GST/IB(C)-03/2019-20 for the period 2018-19;

(b) The appeal shall be decided on merits by passing a speaking order;

(c) If it is ultimately found that the amount recovered from the petitioner 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 Appellate Authority on 1st of September, 2021 at 10:30 A.M., if possible through digital mode;

(f) The Appellate Authority shall condone the delay in filing the appeal and decide the appeal 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 appeal, no coercive steps shall be taken against the petitioner.

(i) The Appellate 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 Appellate Authority shall decide the appeal on merits expeditiously, preferably within a period of two months from the date of appearance of the petitioner;

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

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

(n) 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;

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

(p) 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	07.07.2021
Transmission Date	