IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18285 of 2021

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M/s B.A. Constructions a Proprietorsihp firm having its place of business at Banauli, Chenari, Sasaram, District - Rohtas at Sasaram through its proprietor namely Bablu Ansari, male aged about 37 years son of Aftab Alam, Resident of Near Uardu, Maktab, Bauli, Chenari, Rohtas at Sasaram, Bihar - 821104.

... ... Petitioner/s

Versus

1. Union of India through the Commissioner, Department of Central GST and CX, Bihar at Patna.
2. The Assistant Commissioner Central GST and CX, Gaya, Division, District - Gaya.
3. Superintendent, CGST and CEX Range, Sasaram, District - Rohtas at Sasaram.

... ... Respondent/s

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Appearance :

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

For the Respondent/s : Dr. Krishna Nandan Singh, ASG
Mr. Anshuman Singh, Sr. SC CGST & CT
Mr. Sriram Krishna, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE A. M. BADAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-10-2021

Heard learned counsel for the parties.

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 dated 27.11.2020 whereby the assistant Commissioner, Central GST and CX, Division – where has been pleased to pass order for recovery of service tax for the year 2013 – 14 in the tune of ₹ 29,12,139 and also imposed penalty of ₹ 29,12,139 for the financial year 2013 – 14 for failure to furnish

ST-3 returns during the period financial year 2014 – 15 along with other documents; on the ground that the order passed by the respondent No. 2 is an ex parte order, there is no opportunity of hearing been given to the petitioner, notices have been issued to the petitioner during the period of Covid – 19 surge and not received by the petitioner;

b) For issuance of a writ in the nature of certiorari for quashing of the later dated 22.7.2021 issued under the signature of Supt, CGST and CX range, Sasaram by which the petitioner was directed to pay service tax of ₹ 29,12,139 and penalty of ₹ 29,12,139 for the financial year 2013 – 14 within 10 days otherwise action will be taken for recovery of the area amount under section 87 of the Finance Act 1994 ; on the ground that the entire procedure for notice and the order passed on the basis of which the present notice is issued is behind the back of the petitioner, there is no opportunity of hearing been given to the petitioner, the petitioner is having all documents to substantiate and prove the fact that there is no liability with regard to service tax for the year 2014 – 15;

c) For issuance of a writ or order or direction restraining the respondent No. 3 from making any coercive recovery of the amount in demand (tax, interest and penalty) as contained in the order dated 22.07.2021 during the pendency of the present writ application;

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

We are of the considered view that the issue raised in the present petition can be considered and dealt with, efficaciously by an authority constituted under the provisions of the Act.

In the attending facts and circumstances, since the issue pertains to Financial Year 2013-2014, we dispose of the present petition in the following terms, leaving all questions of fact and law open, to be adjudicated by the Appellate Authority:-

(a) Petitioner is directed to prefer an appeal against the impugned order dated 27.11.2020, passed by respondent no.2, the Assistant Commissioner, Central GST & CX, Gaya Division, District-Gaya, in Order Original No. 11/Asst. Commissioner/Service Tax/Gaya/20-21 (Annexure-P/4) as also the order dated 22.7.2021 passed by the Superintendent, CGST & CEX Range, Sasaram (Annexure-P/5);

(b) The Appellate Authority shall positively consider and decide the appeal on merits, in accordance with law, expeditiously and preferably within a period of three months thereafter, after complying with the principles of natural justice;

(c) The issue of limitation shall not come in the way of the Appellate Authority in considering and deciding the appeal on merits, in accordance with law.

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

(e) Shri Anshuman Singh, learned counsel for the respondents states that till such time the appeal is filed, no coercive action shall be taken against the petitioner.

(f) The Appellate Authority shall pass an order only after affording adequate opportunity to all concerned, including the writ petitioner;

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

(h) The Appellate Authority shall positively decide the appeal on merits expeditiously, preferably within a period of three months from the date of filing the appeal;

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

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

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

(l) 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;

(m) If possible, proceedings during the time of current

Pandemic [Covid-19] be conducted through digital mode;

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

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)

(A. M. Badar, J)

P.K.P./Amrendra

AFR/NAFR	
CAV DATE	
Uploading Date	03.11.2021
Transmission Date	