IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19263 of 2021

==

M/s Shree Enterprises a proprietorship firm having its place of business at 385, Mahatma Gandhi Nagar, Patna - 800020 through its proprietor namely Bhagwan Prasad male aged about 63 years Son of Ram Lakhan Prasad resident of Bhagwan Niwas, Near Old SBI Building, Behind Jahagi Kothi Complex, Kankarbagh, Lohia Nagar, Patna - 800020.

... ... 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), West Division, Patna.
3. The Deputy Commissioner of State Taxes, Patna South Circle, Patna.

... ... Respondent/s

==

Appearance :
For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
For the Respondent/s : Mr.Vikash Kumar (S.C. 11)

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-11-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

"a) For issuance of a writ in the nature of certiorary for quashing of the appellate order dated 13.08.2021 passed and issued vide memo number 1047 by the respondent number 2 whereby the appeal preferred by the petitioner under Section 107 of the Bihar Goods And Services Tax Act, 2017 (hereinafter referred to as the Bihar Act, 2017 for short) has been rejected on technical grounds;

b) For issuance of a writ in the nature of certiorary for quashing of the order dated 13.08.2019 passed by the respondent No. 3 under Section 73 of the Bihar Act, 2017 and summary of order issued in form GST DRC-07 dated 13.080.2019 by the respondent number 3 on grounds of the same being nonspeaking and in complete ignorance to the principle of law laid down by a division bench of this honourable court in C.W.J.C. No. 2125 of 2019 (Commercial Steel Enginering Corporation Versus The State of Bihar And Others);

c) For further holding and a declaration that once the figure of transitional credit claimed inadvertently by the petitioner which was reversed voluntarily in the month of July 2018, the imposition and demand of the same amount of tax alongwith interest and penalty on 13.08.2019 constitutes a case of double taxation which is impermissible in law;

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

It is brought to our notice that vide impugned order dated 13.08.2021 passed by the Respondent No. 2 namely the

Additional Commissioner of State Tax (Appeal), West Division, Patna in Appeal Case No. AD1003210027603, the appeal of the petitioner against the order dated 13.08.2019 passed by Respondent No. 3, namely The Deputy Commissioner of State Taxes, Patna South Circle, Patna in GSTIN 10A1YPP3101F1ZK under Section 73 of GST Act, 2017; for the period 2017-18 in Form GST DRC-07, has been rejected.

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 13.08.2021 passed by the Respondent No. 2 namely the Additional Commissioner of State Tax (Appeal), West Division, Patna in Appeal Case No. AD1003210027603, and the order dated 13.08.2019 passed by Respondent No. 3, namely The Deputy Commissioner of State Taxes, Patna South Circle, Patna in GSTIN 10A1YPP3101F1ZK under Section 73 of GST Act, 2017; for the period 2017-18 in Form GST DRC-07;

(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 4th of January, 2022 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 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/Veena-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	