IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20075 of 2021

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M/s Shree Madhav Hardware a proprietorship firm having its place of business at N.A. Ward No. 32, Gulabbagh, Purnea, Bihar - 854326 through its director namely Brajesh Kumar Agrawal male aged about 44 years Son of Girdhari Lal Agrawal Resident of NH - 31, near marketing gate, Gulabbagh, Purnea - 854326.

... ... 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), Purnea Division, Purnea.
3. The Deputy Commissioner of State Taxes, Purnea Circle, Purnea. (2018-2019)

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
For the Respondent/s : Mr. Vivek Prasad (GP-7)

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

Date : 06-12-2021

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

a) For issuance of a writ in the nature of certiorari for quashing of the appellate order dated 21.12.2020 issued vide memo number 226 by the respondent no. 2 whereby the appeal preferred by the petitioner against the order dated 20.03.2020 passed by the respondent No. 3 under section 73 read with section 50 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 of non-filing of certified copy and consequent bar of limitation having got attracted in terms of the proviso and explanation to rule 108 (3) of the Bihar Goods And Services Tax Rules 2017 (hereinafter referred to as the Bihar rules 2017 for short);

b) For further issuance of a writ in the nature of certiorari for quashing of the order dated 20.03.2020 passed by the respondent No. 3 under section 73 read with section 50 of the Bihar act 2017 imposing liability of tax, interest and penalty against the petitioner for the financial year 2018 – 2019;

c) For further holding and a declaration that the effect and operation of section 16 (2) (c) of the Bihar act 2017 as against the petitioner would depend upon the simultaneous enquiry, scrutiny of the returns furnished by the corresponding supplier and action against him in terms of the provisions of the Bihar act 2017 and Central Goods And Services Tax Act, 2017 (hereinafter referred to as the central act 2017 for short);

d) For further holding and a declaration that the action of the respondent No. 3 in imposing liability of tax, interest and penalty against the petitioner for a transaction with respect to which the petitioner had already parted with the tax amount at the hands of the connected supplier without any action against such supplier of the petitioner is illegal, without jurisdiction and unsustainable in the eye of law;

e) For further holding and a declaration that the law under Bihar act 2017 and central act 2017 requires the petitioner to pay the statutory tax to the supplier on point of purchase of goods or services and it is the bounden duty of such supplier to hand over the amount of tax collected from the petitioner to the government as the supplier stands as a trustee as against the government in so far as collection and payment of tax from the petitioner is concerned;

f) For further holding and a declaration that the denial of input tax credit to the petitioner by the respondents on account of default committed by the supplier coupled with no action against the supplier to recover the tax already paid by the petitioner is in teeth of the principal of law held in the maxim "lex non cogit ad impossiblia" as it would be impossible for the petitioner to make the supplier hand over the amount of tax to the government;

g) 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 21.12.2020, passed by the Respondent No. 2 namely Additional Commissioner of State Taxes (Appeal), Purnea Division, Purnea (Annexure-7), in Appeal Case No. (ARN) AD1006200005613, the appeal of the petitioner against the order dated 20.03.2020 passed by the Respondent No. 3 namely Deputy Commissioner of State Taxes, Purnea Circle, Purnea, in Reference No. ZA100320020240W (Annexure-5) and Summary of Order in Form GST DRC-07 dated 20.03.2020 (Annexure-5/A) has been rejected merely on the grounds of non filing of certified copy and 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 21.12.2020, passed by the Respondent No. 2 namely Additional Commissioner of State Taxes (Appeal), Purnea Division, Purnea (Annexure-7), in Appeal Case No. (ARN) AD1006200005613, the order dated 20.03.2020 passed by the Respondent No. 3 namely Deputy Commissioner of State Taxes, Purnea Circle, Purnea, in Reference No. ZA100320020240W (Annexure-5) and Summary of Order in Form GST DRC-07 dated 20.03.2020 (Annexure-5/A);

(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 27th of December, 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 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)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	10.12.2021
Transmission Date	