IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20449 of 2021

==

Sharda Chandel Contract Private Limited through its Director Dhrub Narayan Singh, male, aged about 67 years, Son of Brijnarayan Singh, Resident of Sitab Diyar, P.O. and P.S. - Dhanaha, District- District - West Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary - Cum- commissioner Department of State Taxes, Government of Bihar, Patna.
2. The Principal Secretary - Cum- commissioner Department of State Taxes, Government of Bihar, Patna.
3. The Additional Commissioner of State Taxes, Bagaha Circle, Tirhut Division (Appeal), Muzaffarpur.
4. The Joint Commissioner of State Tax, Bagaha Circle Bagaha.

... ... Respondent/s

==

Appearance :

For the Petitioner/s : Mr.Alok Ranjan, Advocate

For the Respondent/s : Mr.Vikash Kumar (SC 11)

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 20-12-2021

Petitioner has prayed for the following relief(s):

I. For quashing the appellate order dated 27.10.2020 passed by respondent no. 3 whereby and where under the appeal preferred on behalf of the petitioner under Bihar Goods and Services Tax Act 2017 (here in after referred to as the Bihar Goods Act 2017 in short) has been rejected on Technical ground.

II. For issuance of a writ in the nature of certiorari for quashing of the order dated 15.01.2020 signed on 11.02.2020 passed by the respondent No. 4 under section 74 of the Bihar Act, 2017 and summary of order issued in form GST DRC - 07 dated by the respondent number 4 on grounds of the same being nonspeaking, ex-parte, predetermined and in complete ignorance to the principle of law laid down by a division bench of this honorable court " in C.W.J.C. number 2125 of 2019 (Commercial Steel Engineering Corporation Versus The State Of Bihar And Others), whereby and where under a demand of Rs. 3245270.00 has been issued and petitioner has been directed to pay the same.

c) For further holding and a declaration that once the tax is paid, interest and penalty cannot be recovered and the imposition and demand of the same amount of tax along with interest and penalty vide order dated 11.02.2020 constitutes a case of double taxation which is impermissible in law;

d) For grant of any other relief/ 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 27th of October, 2020 passed by the Respondent No. 3 namely the Additional Commissioner of State Taxes (Appeal), Bagaha Circle, Tirhut Division, Muzaffarpur in Reference No. ZD101020026672A, the appeal of the petitioner against the order dated 15.01.2020 passed by Respondent No. 4, the Joint Commissioner of State Tax, Bagaha Circle, Bagaha, under Section 74 of the Act and summary of order in Form GST DRC-07, for the tax period April 2019-September, 2019, has been rejected merely on the grounds of non-submission of certified copy of the order.

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 27th of October, 2020 passed by the Respondent No. 3 namely the Additional Commissioner of State Taxes (Appeal), Bagaha Circle, Tirhut Division, Muzaffarpur in Reference No. ZD101020026672A, and the order dated 15.01.2020 passed by Respondent No. 4, the Joint Commissioner of State Tax, Bagaha Circle, Bagaha, under Section 74 of the Act and summary of order 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 17th 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/-

AFR/NAFR	
CAV DATE	
Uploading Date	22.12.2021
Transmission Date	