IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.743 of 2022

==

Dhillon Freight Carriers Pvt. Ltd. having its office at Bhagwat Nagar, Patna through is authorized signatory Imran Khan (aged about 32 years Male) Son of Late Md. Mainuddin Khan resident of Raza Bazar, Back of IGIMS Bailey Road, Patna.

... ... Petitioner/s

Versus

1. Commissioner of State Tax having its office at Vikas Bhawan Bailey Road, Patna.
2. Joint Commissioner of State Tax Investigation Bureau, IB, Patna.
3. Addl. Commissioner of State Tax (Appeal). East Division, Patna.

... ... Respondent/s

==

Appearance :

For the Petitioner/s : Mr.D.V.Pathy, 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)

(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 : 24-01-2022

Petitioner has prayed for the following relief(s):

> "i) The ex-parte order dated 2 order dated 24.03.2021 (as contained in Annexure-6) passed by the respondent no. 3 in Appeal Case No. -GST/IB 01/2020-21 for the period 2019-20 dismissing the appeal in liminie without service of notice on grant of opportunity to of being heard be quashed.
> ii) the order dated 16.07.2019 (as contained Annexure-3 Series) passed by the respondent no.2 for the period 2019-20 under section 129(3) of the Bihar Goods and Service Tax Act, 2017 (hereinafter called the Act) be quashed.
>
> iii) The notice of demand dated 17.07.2019 (as

WEB COPY

contained Annexure-3 Series) issued by the respondent no.2 for the period 2019-20 under Section 129(3) of the Bihar Goods and Service Tax Act, 2017 (hereinafter called the Act) be stayed.

iv) For granting any other relief(s) to which the petitioner is otherwise found entitled to."

It is brought to our notice that vide impugned order dated 24.03.2021 passed by the Respondent No. 3 namely the Additional Commissioner of State Tax (Appeal), East Division, Patna, in Appeal No. GST/IB-01/2020-21, the appeal of the petitioner against the order dated 16.07.2019 passed by Respondent No. 2, namely the J.C.S.T., Investigation Bureau, Patna, under Section 129(3) of BGST Act, 2017; 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

WEB COPY

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; (c) We also find the authorities not to have adjudicated the matter on the attending facts and circumstances. All issues of fact and law ought to have been dealt with, even if the proceedings were ex parte in nature.

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 24.03.2021 passed by the Respondent No. 3 namely the Additional Commissioner of State Tax (Appeal), East Division, Patna, in Appeal No. GST/IB-01/2020-21, and the order dated 16.07.2019 passed by Respondent No. 2, namely the J.C.S.T., Investigation Bureau, Patna, under Section 129(3) of BGST Act, 2017;

(b) We accept the statement of the petitioner that ten per cent of the total amount, being condition prerequisite for

WEB COPY

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 24.02.2022 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;

WEB COPY

(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;

WEB COPY

(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/chn

AFR/NAFR	
CAV DATE	
Uploading Date	28.01.2022
Transmission Date	

WEB COPY