IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2228 of 2022

M/s Forever Living Trading (India) Private Limited having its local place of business at First Floor, Lakheshwari Bhawan, Near Old Museum, Budh Marg, Patna-800001 through its authorised representative namely Ajay Kumar Yadav, male aged about 36 years, son of Rajesh Kumar Yadav, resident of Village-Babura, Allahabad, Khain, U.P.-212307.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeal) Central Division, Patna.
3. The Deputy Commissioner of State Taxes, Special Circle, Patna.
4. The Assistant Commissioner of State Taxes, Special Circle, Patna.

... ... Respondent/s

Appearance :

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

For the Respondent/s : Mr.Vivek Prasad, GP-7

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 : 14-02-2022

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 23.10.2021 passed by the respondent number 2 and issued vide memo number 627 in appeal case number AD1009200038040 and also for quashing of the summary of demand issued in form GST APL – 04 dated 23.09.2020 whereby the appeal preferred by the petitioner under section 107 of the Central Goods And Services Tax Act, 2017 (hereinafter referred to as the central act 2017 for short) Bihar Goods And Services Tax Act, 2017 (hereinafter referred to as the Bihar act 2017 for short) against the order dated 20.06.2019 passed by the respondent No. 3 has been rejected;

b) For further issuance of writ in the nature of certiorari for quashing of the ex parte order dated 20.06.2019 passed by the respondent No. 3 whereby the petitioner's claim of transitional credit made in terms of section 140 of the Central Act, 2017 and Bihar Act, 2017 by way of electronically uploaded form GST TRAN – 1 has been rejected in most mechanical, nonspeaking and cryptic order;

c) For further issuance of a writ or order or direction upon the respondent No. 3 to reconsider the petitioner's claim of transitional credit and decide afresh after hearing the petitioner and examining the documents and materials in support of such claim to be placed by the petitioner;

d) For further issuance of a writ or order or direction restraining the respondents from taking any coercive action in terms of section 79 of the Central Act, 2017 and Bihar Act, 2017 for recovery of the amount in demand raised in terms of the impugned order dated 20.06.2019 followed by the appellate order dated 23.10.2021 till the petitioner's case is decided afresh by the respondent No. 3;

e) For further holding and a declaration that the respondent No. 3 has proceeded to pass the impugned order dated 20.06.2019 without adequate opportunity of hearing afforded to the petitioner in terms of section 73 of the Central Act, 2017 and Bihar Act ,2017 as no prior show cause notice in form GST DRC – 01 much less the notice in form GST DRC – 01A has ever been served upon the petitioner which renders the impugned order not only violative of the specific statutory provision but also the principles of natural justice;

It is brought to our notice that vide impugned order dated 23rd of October, 2021 (Annexure-4) passed by the Respondent No. 2 namely the Additional Commissioner of State Taxes (Appeal), Central Division, Patna in Appeal Case No. AD1009200038040, the appeal of the petitioner against the order dated 20.06.2019 passed by the Deputy Commissioner of State Taxes, Special Circle, Patna in GSTIN/ID 10AABCF6616PIZM as also summary of demand dated 23.09.2020, have been rejected merely on the grounds of being barred by limitation as also non-payment of 10% amount of tax. The orders were ex parte in nature.

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, 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 reason sufficient 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 23rd of October, 2021 (Annexure-4) passed by the Respondent No. 2 namely the Additional Commissioner of State Taxes (Appeal), Central Division, Patna in Appeal Case No. AD1009200038040, order dated 20.06.2019 passed by the Deputy Commissioner of State Taxes, Special Circle, Patna in GSTIN/ID 10AABCF6616PIZM as also summary of demand dated 23.09.2020.

(b) The petitioner undertakes to deposit twenty per cent of the amount of the demand raised before the Assessing Officer. This shall be done within four weeks.

(c) 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 had already deposited up to the extent of twenty percent, the same shall be set off against the amount to be deposited. Also, if the deposit is found to be in excess of what would stand adjudicated, the same shall be refunded within two months from the date of passing of the order;

(d) 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.

(e) Petitioner undertakes to appear before the Assessing Authority on 28.02.2022 at 10:30 A.M., if possible through digital mode;

(f) The Assessing Authority shall decide the case on merits after complying with the principles of natural justice;

(g) 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 to be *ex parte* in nature;

(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 assessment, 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 before this Court, 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 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)

Sujit/-

AFR/NAFR	
CAV DATE	
Uploading Date	16.02.2022
Transmission Date	