IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2937 of 2022

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Sai Enterprises (Proprietorship) 2, Bijay Kumar Chourasia, Sikandarpur, Mirjanhat, Bhagalpur, Bihar 812005, through its proprietor namely Bijay Kumar Chourasia, aged about 56 years, Gender - Male, Son of Banarsi Modi, Resident of Near Water Tank, Sikanderpur, Maksuspur, Mirjanghat, P.S. - Maksuspur, District - Bhagalpur, Bihar 812005.

... ... Petitioner/s

Versus

1. The Union of India through the Principal Chief Commissioner of Central Goods and Service Tax, Government of India, New Delhi.
2. The Principal Commissioner of Central Goods and Service Tax, Government of India, New Delhi.
3. The Commissioner Central Goods and Service Tax, Government of India, New Delhi.
4. The State of Bihar, through the Principal Chief Commissioner, GST, State Tax, Bihar, Patna.
5. The Chief Commissioner State Tax, Bihar, Patna.
6. The Additional Commissioner State Tax (Appeal), Bhagalpur Division, Bhagalpur.
7. The Deputy Commissioner State Taxes, Bhagalpur Circle, Bhagalpur.
8. The Joint Commissioner State Taxes, Bhagalpur Circle, Bhagalpur.
9. The Assistant Commissioner State Tax, Bhagalpur Circle, Bhagalpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar, Advocate Mr. Santosh Kumar, Advocate Mr. Pankaj Kumar, Advocate Mr. Ayush Kumar, Advocate Mr. Yogesh Kumar, Advocate
For the Respondent/s	:	Dr. Krishna Nandan Singh, ASG Mr. Anshuman Singh, Sr. SC CGST & CX Mr. Sriram Krishna, JC to ASG Mr. Vikash Kumar, SC-11

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

Date : 28-02-2022

Heard learned counsel for the parties.

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

i. For setting aside the order dated 25.02.2020 passed by Assistant Commissioner State Tax, Bhagalpur Circle, Bhagalpur, whereby Interest of 64,709+64,709+351,603=481021 has been imposed under Section 75 (12) of the Goods and Services Tax Act, 2017 for the month of August’17, Jan’18 and March’18 in exerciser of jurisdiction conferred under Section 73 of the Bihar Goods and Services Tax Act, 2017, but without issuance of notice in terms of Rule 142 of Bihar Goods and Services Tax Rule, 2017 as also in gross violation of principle of natural justice.

ii. For setting aside consequential DRC 07 Dated 26.02.2020 for Rs.481021 for the Financial year 2017-18 issued by Assistant Commissioner State Tax, Bhagalpur Circle, Bhagalpur.

iii. For setting aside the appellant order dated 09.09.2021 contained in Memo No. 266 Dated 09.09.2021 passed by Additional Commissioner State Taxes, Bhagalpur Division, Bhagalpur, whereby the appeal filed by the petitioner has been dismissed.

iv. For any other relief for which the petitioner may be deemed entitled to.

It is brought to our notice that vide impugned order dated 09.09.2021 passed by the Respondent No. 6 namely the Additional Commissioner, State Tax (Appeal), Bhagalpur Division, Bhagalpur in Appeal Case No. (ARN) AD100320000388X, (Annexure-6), the appeal of the petitioner against the order dated 25.02.2020, passed by the Respondent No. 9 namely the Assistant Commissioner of State Tax, Bhagalpur Circle, Bhagalpur, in GSTIN No. 10AFHPC6919C1Z3 (Annexure-4) and Summary of the Order in Form GST DRC-07 dated 26.02.2020 in Reference No. ZA100220027337C (Annexure-5) has been rejected. Also, the petitioner’s contention of applicability of amendment brought in by virtue of Section 50 had not been taken into account. Both 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. 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 reasons sufficient enough 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. 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. As such, we dispose of the present writ petition in the following mutually agreeable terms:

(a) We quash and set aside the impugned order dated 09.09.2021 passed by the Respondent No. 6 namely the Additional Commissioner, State Tax (Appeal), Bhagalpur Division, Bhagalpur in Appeal Case No. (ARN) AD100320000388X, (Annexure-6), order dated 25.02.2020, passed by the Respondent No. 9 namely the

Assistant Commissioner of State Tax, Bhagalpur Circle, Bhagalpur, in GSTIN No. 10AFHPC6919C1Z3 (Annexure-4) and Summary of the Order in Form GST DRC-07 dated 26.02.2020 in Reference No. ZA100220027337C (Annexure-5);

(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 21st of March, 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 stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, 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)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	03.03.2022
Transmission Date	