IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3381 of 2022

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M/s Frontline (NCR) Business Solutions Private Limited having its office at 302, 3rd, Patna Super Market, Fraser Road, Near Doordarshan Kendra, Bihar, 800001 through its General Manager, Rakesh Kumar Singh (Male), Aged About 39 Years, S/o Gautam Singh Residing at Defence Colony, Near Family Quarter Shahpur, P.O. - Danapur Cantt, P.S. - Shahpur, District - Patna Bihar, 801503.

... ... Petitioner/s

Versus

1. The Union of India Through the Secretary Department of Revenue, Ministry of Finance, North Block, New Delhi- 110001.
2. The Secretary Department of Revenue, Ministry of Finance, North Block, New Delhi - 110001.
3. The State of Bihar through the Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
4. The Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
5. The Additional Commissioner State Tax (Appeals), West Division, Patna.
6. The Joint Commissioner of State Tax, Gandhi Maidan Jurisdiction, Gandhi Maidan, Patna West, Bihar.
7. The Assistant Commissioner of State Tax, Gandhi Maidan Jurisdiction, Gandhi Maidan, Patna West, Bihar.
8. The Bihar State Road Transport Corporation, Govt. of Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Brisketu Sharan Pandey, Advocate
For the Respondent/s	:	Mr. Dr. K.N. Singh, ASG
		Mr. Anshuman Singh, Sr. S.C. CGST & EX
For the State	:	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

Petitioner has prayed for the following relief(s):

"(i) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the Appellate order dated 05.03.2020 bearing Case no. GST/GM/47/19-20 / Memo No. 320 passed by Respondent No. 5 for the month August 2019 (Annexure-P/7) whereby and whereunder the appeal filed by the petitioner has been rejected on the grounds of limitation;

(ii) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the best-judgment assessment order dated 09.10.2019 (order No. 1215) (Annexure-P/2) passed by Respondent No. 6 for the month August 2019 whereby and whereunder the ex parte best-judgment assessment order has been passed under Section 62 of the CGST Act, 2017, for the aforesaid month;

(iii) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the demand issued in form DRC 07- order dated 18.10.2019 (order No. ZA1010190027642) (Annexure-P/3) passed by Respondent No. 6 for the month August 2019 whereby and whereunder the ex-parte demand order DRC 07 worth Rs.28,34,286/-, (as against CGST worth Rs.13,96,200/- (excluding interest of Rs.20,943/-), CGST worth Rs. 13,96,200/- (excluding interest of Rs.20,943/-) have been issued under Rule 73(5) of the CGST/BGST Rules, 2017, for the aforesaid month;

(iv) For issuing a writ of certiorari or any other appropriate writ holding that since the Petitioner has already filed the return for the month of

August 2019 and paid the amounts of CGST and SGST along with late fee, therefore, no further recovery can be made under the said order (contained in Form GST DRC-13) (Annexure-P/5) dated 25.02.2020 issued to Respondent No. 8 under section 79(1)(c) of the Bihar Goods and Service Tax Act, 2017;

(v) For issuing a writ of certiorari or any other appropriate writ directing the Respondents not take any coercive action including recovery from bank account and third parties until pendency of the present writ application;

(vi) For issuing writ of mandamus and thereby directing the Respondents to refund a sum of Rs.2,79,240/- (Rs.1,39,620/- (CGST) & Rs.1,39,620/- (SGST) for the month August 2019, Which the petitioner has deposited as pre-deposit amounting to ten percent of disputed tax amount as needed to be paid under Section 107(6)(b) of Central Goods and Service Tax Act, 2017, before filing an appeal under CGST/SGST for the disputed period of August-2019 of F.Y. 2019-20;

(vii) For issuing a writ of mandamus or any other appropriate writ holding that since as the Petitioner has already filed the return for the month of August 2019 and paid the amounts of CGST and SGST along with late fee, which is far in excess against of the amounts demanded by Demand Order/DRC-07 dated 18.10.2019 for August-19 therefore, no further recovery can be made under the said order;

(viii) For issuance of appropriate direction including the mandamus directing the respondents to pass fresh assessment order for the period until March 2020 (i.e. F.Y. 2019-20) to ascertain any additional liability/discrepancy found after scrutiny of the return filed u/s 61 since as per the petitioner he has already filed all his monthly returns and there is no outstanding liability till March 2020 (i.e. F.Y. 2019-20);

(ix) For passing any such other order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

It is brought to our notice that vide impugned order dated 05.03.2020 passed by the Respondent No. 5 namely the Additional Commissioner of State Taxes (Appeals), West Division, Patna, in Case No.GST/GM/47/19-20/ Memo No.320, the appeal of the petitioner against the order dated 09.10.2019 passed by Respondent No. 6, namely the The Joint Commissioner of State Tax, Gandhi Maidan Jurisdiction, Gandhi Maidan, Patna West, Bihar, under Section 62 of CGST Act, 2017; and summary of order dated 18.10.2019 in Form GST DRC-07 for the month of August, 2019, has been rejected on the ground of the same being barred by limitation.

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 and the limitation shall not be allowed to come in the way. 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; (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 05.03.2020 passed by the Respondent No. 5 namely the Additional Commissioner of State Taxes (Appeals), West Division, Patna, in Case No.GST/GM/47/19-20/ Memo No.320, the order dated 09.10.2019 passed by Respondent No. 6, namely the The Joint Commissioner of State Tax, Gandhi Maidan Jurisdiction, Gandhi Maidan, Patna West, Bihar, under Section 62 of CGST Act, 2017; and summary of order dated 18.10.2019 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 28th 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 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/-DKS

AFR/NAFR	
CAV DATE	
Uploading Date	03.03.2022
Transmission Date	