IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3663 of 2022

Mithilesh Kumar Gupta Son of Shri Vishunu Dayal Sah Resident of Chakfaid, Post - Sukki, District- Vaishali, Bihar - 843114, Proprietor of M/s. Mahabir Drugs, situated at Mahabir Chowk Sakri, Bihar - 847239.

... ... Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary Cum Commissioner, Department of State Taxes, Govt. of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeals), Darbhanga Division, Darbhanga.
3. The Assistant Commissioner of State Taxes, Darbhanga.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar Jha, Advocate Mr. Hrishikesh, Advocate
For the Respondent/s	:	Mr. Lalit Kishore (AG)

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

Date : 07-03-2022

Heard learned counsel for the parties.

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

i. For issuance of writ in the nature of Certiorari, for quashing of the communication in the form GST APL- 04 dated 10.01.2022 along with Order dated 08.01.2022 issued by the Respondent No. 2, whereby the appeal preferred by the Petitioner against the Order dated 08.03.2020 passed by the Respondent No. 3 under Section 73 of the Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as the BGST Act, 2017) has been rejected and a summary revised demand has been forwarded to the Petitioner.

ii. For issuance of a writ in the nature of certiorari for quashing of the order dated 08.03.2020 passed and issued by the Respondent No. 3, whereby duty demand of Rs. 3,29,784/- along with interest of Rs. 74,161/- has been demanded under the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act, 2017) and penalty of Rs. 50,027/- has been imposed under CGST Act, 2017 along with duty demand of Rs. 3,29,784/- and interest of Rs. 74,161/- has been demanded under the BGST Act, 2017 and penalty of Rs. 50,027/- has been imposed under BGST Act, 2017.

iii. For further restraining the respondents from making recovery of amount of tax, interest and penalty imposed and raised in terms of Order dated 08.03.2020 passed by the Respondent no. 3.

iv. For holding and declaration that the impugned order dated 10.01.2022 passed by the Respondent No. 2 is cryptic, non speaking and in teeth of Section 107 of the BGST Act, 2017.

v. For any other relief or reliefs for which the Petitioner may be found entitled in the facts and circumstances of this case.

It is brought to our notice that vide impugned order dated 08.01.2022 passed by the Respondent No. 2 namely the

Additional Commissioner of State Taxes (Appeals), Darbhanga Division, Darbhanga in Appeal No. AD100321003943U, the appeal of the petitioner against the order dated 08.03.2020 passed by the Respondent No. 3, namely Assistant Commissioner of State Taxes, Darbhanga in Reference No. ZA100320012303S (Annexure-4) has been rejected. 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 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, 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 08.01.2022 passed by the Respondent No. 2 namely the Additional Commissioner of State Taxes (Appeals), Darbhanga Division, Darbhanga in Appeal No. AD100321003943U; order dated 08.03.2020 passed by the Respondent No. 3, namely Assistant Commissioner of State Taxes, Darbhanga in Reference No. ZA100320012303S (Annexure-4); and the order no. ZD100122003146H in Form GST APL-04 dated 10.01.2022;

(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 4th of February, 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	09.03.2022
Transmission Date	