

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4171 of 2022

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HAV Automobiles Pvt. Ltd. havnig its registered office at Sudharma, Opposite A.N. college, Boring Road, Patna through one of its directors namely Harshendra Kumar male aged about 45 years son of D.P.N. Singh resident of Amawa Kothi, Off Fraser Road, Patna - 800001.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeals), Patna West, Patna.
3. The Deputy Commissioner of State Taxes, Patna Central Circle, Patna. (2018-2019).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Gautam Kumar Kejriwal, Adv
For the Respondent/s : Mr.Vivek Prasad (GP 7)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-03-2022

Heard learned counsel for the parties.

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

“a) For issuance of writ or order in the nature of certiorari for quashing of the appellate order dated 13.01.2021 issued vide memo number 46 Patna passed by the respondent no. 2 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) and Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as the Bihar act 2017 for short), being ex-parte and as such violative of the principles of natural justice;

b) For further issuance of a writ in the nature of certiorari for quashing of the ex parte order dated 08.08.2019 and the summary of order issued in form GST DRC-07 dated 14.08.2019 passed and issued by the respondent no. 3 under section 73 of the central act 2017 and Bihar act 2017;

c) For further restraining the respondents from taking any coercive action against the petitioner for recovery of the amount of tax and interest and penalty in terms of the impugned orders during the pendency of the present writ application;

It is brought to our notice that vide impugned order dated 13.01.2021 (Annexure 3) bearing Memo No. 46, passed by the Respondent No. 2, namely, the Additional Commissioner of State Taxes (Appeals), Patna West, Patna, in Appeal No. (ARN) AD1011190008688, the appeal of the petitioner against the impugned order dated 08.08.2019, passed by Respondent No. 3, namely, the Deputy Commissioner of State Taxes, Patna Central Circle, Patna (Annexure-1), in GSTIN 10AACCH5613D1ZD, under Section 73 of BGST Act, 2017; and summary of order dated 14.08.2019 in Form GST DRC-07 for the tax period Apr 2018 to March, 2019 (Reference No. ZA100819000646P), has been rejected by a cryptic, misconceived and non-speaking order.

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 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. 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 13.01.2021 (Annexure 3) bearing Memo No. 46, passed by the Respondent No. 2, namely, the Additional Commissioner of State Taxes (Appeals), Patna West, Patna, in Appeal No. (ARN) AD1011190008688, impugned order dated 08.08.2019, passed by Respondent No. 3, namely, the Deputy Commissioner of State Taxes, Patna Central Circle, Patna (Annexure-1), in GSTIN 10AACCH5613D1ZD, under Section 73 of BGST Act, 2017; and summary of order dated 14.08.2019 in Form GST

DRC-07 (Reference No. ZA100819000646P);

(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 11.04.2022 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;

The instant petition stands 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)

ranjan/sanjay-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	