IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3882 of 2022

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M/s Ajay Kumar Singh a proprietorship firm through its Proprietor Sri Ajay Kumar Singh, aged about 47 years, Gender- Male, Son of Chatthu Singh, Resident of Nehru Nagar Arrah, P.S.- Arrah, District- Bhojpur.

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary cum Commissioner State Tax, Department of Commercial Taxes, Vikash Bhavan, Bailey Road, Patna.
2. The Additional Commissioner of State Tax (Appeal), Sahabad Circle (Patna West), Patna.
3. The Joint Commissioner of State Tax, Sahabad Circle, Arrah.
4. The Deputy Commissioner of State Tax, Sahabad Circle, Arrah.
5. The Assistant Commissioner of State Tax, Sahabad Circle, Arrah.
6. The Branch Manager, Punjab National Bank, Arrah Branch, Arrah (Bhojpur).

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Advocate
		Mr. Mohit Agarwal, Advocate
		Mr. Akshat Agrawal, Advocate
		Mrs. Sushila Agrawal, Advocate
		Mr. Anand Kumar, Advocate
		Ms. Sushmita Mishra, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC-11
		Mr. Kumar Priya Ranjan, SC PNB
		Mr. Sriram Krishna, Advocate
		Mr. Chandan Kumar, Advocate

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

Date : 09-03-2022

Heard learned counsel for the parties.

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

i) For quashing of the Appellate Order dated 18.12.2021 passed by the Respondent No. 2 (Appellate Authority) vide Order No. ZD1012210112985 in Form-GST Appellant-04 in Appeal Case No. GST/SH-52 of 2020-21 arising out of ARN - AD1003210009601 whereby the impugned order dated 17.01.2021 bearing Ref. No. ZD100121015613E passed under Section 73(9) of the Bihar GST Act, 2017 by the Respondent No. 3 was affirmed without considering the documents made available to the Respondent No. 2 (Appellate Authority) and also without considering that the Respondent No. 3 has passed the impugned order dated 17.01.2021 without considering the time petition dated 17.12.2020 bearing ARN-ZD1012200177907 and therefore is in violation of principles of natural justice;

ii) For quashing of the impugned order dated 17.01.2021 bearing Ref. No. ZD100121015613E passed under Section 73(9) of the Bihar GST Act, 2017 and Notice of Demand dated 17.01.2021 in Form-GST-DRC-7 by the Respondent No. 3 for being passed in violation of principles of natural justice as the time petition dated 17.12.2020 bearing ARN-ZD1012200177907 filed by the petitioner was not considered;

iii) For direction upon the Respondent Bank to release the Bank Account of the petitioner firm bearing Current A/c

No. 12161131000637, Punjab National Bank, Arrah Branch which has been attached in compliance to the direction issued by the Respondent No. 3 for recovery of the impugned demand notice/summary of order dated 17.01.2021;

iv) For quashing of the notice under Section 79(1)(c) of the Bihar GST Act, 2017 bearing Ref. No. of recovery-289 dated 25.02.2022 issued under the signature of the Respondent No. 3 whereby the office of the Superintendent, District Jail, Arrah has been directed to withhold the payments due to the petitioner for recovery of the impugned demand notice/summary of order dated 17.01.2021;

v) For holding that if the recipient of the goods deducts TDS on the entire value of supply which includes taxable and non-taxable goods, the entire supply irrespective of including non-taxable goods cannot be considered as taxable goods and subjected to tax on ground of suppression of turnover by the Respondent Department as the same is contrary to law and would amount to unjust enrichment;

vi) For holding that in the facts of the present case the petitioner could not be alleged of suppression of turnover merely on the ground that deduction of TDS has been made on the entire supply value by the recipient including non-taxable goods and the petitioner has claimed the TDS so deducted; and/or for any other relief(s) for which the Petitioner may be found entitled to in the facts and circumstances of the present case.

It is brought to our notice that vide impugned order dated 18.12.2021 passed by the Additional Commissioner of State Tax (Appeal), Sahabad Circle (Patna West), Patna in Appeal Case No. GST/SH-52 of 2020-21, order in Form GST APL-04 dated 18.12.2021 passed in Order No. ZD1012210112985 (Annexure-8), the appeal of the petitioner against the order dated 17.01.2021, passed by the Joint Commissioner of State Tax, Sahabad, Patna West, Bihar in Reference No. ZD100121015613E (Annexure-4) and Summary of the Order in Form GST DRC-07 dated 17.01.2021 (Annexure-4/A) has been rejected.

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 18.12.2021 passed by the Additional Commissioner of State Tax (Appeal), Sahabad Circle (Patna West), Patna in Appeal Case No. GST/SH-52 of 2020-21, order in Form GST APL-04 dated 18.12.2021 passed in Order No. ZD1012210112985 (Annexure-8), order dated 17.01.2021, passed by the Joint Commissioner of State Tax, Sahabad, Patna West, Bihar in Reference No. ZD100121015613E (Annexure-4), Summary of the Order in Form GST DRC-07 dated 17.01.2021 (Annexure-4/A) and the order dated 25.02.2022 (Annexure-9);

(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	10.03.2022
Transmission Date	