IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4294 of 2022

==

Devendra Sah son of Rajendra Prasad Sah Resident of- Raghunathpur, Ward No. 2, Supaul, Raghunathpur Bihar, District- Supaul.

... ... Petitioner/s

Versus

1. The Union of India through the Principal Chief Commissioner of Central Tax, Government of India, New Delhi.
2. The Principal Commissioner of Central Tax, Government of India, New Delhi.
3. The Commissioner Central Tax, Government of India, New Delhi.
4. The State of Bihar through the Principal Chief Commissioner, State Tax, Bihar, Patna.
5. The Chief Commissioner, State Tax, Bihar, Patna.
6. The Assistant Commissioner of State Tax, Supaul, Purnea.
7. The Deputy Commissioner Supaul Circle, Supaul.
8. The Additional Commissioner (Appeal) Purnea Division, Purnea.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr.Ranjeet Kumar, Advocate
		Mr. Santosh Kumar, Advocate
		Mr. Yogesh Kumar, Advocate
		Mr. Ayush Kumar, Advocate
		Mr. Kanisk Kaustubh, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC-11
		Mr. Anshuman Singh, Sr. SC, CGST & CX

==

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

Date : 05-04-2022

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

> "i. For setting aside the order dated 09.03.2020, passed by the Assistant Commissioner, State Tax Supaul Circle, Supaul, whereby the tax, interest and penalty has been

imposed upon the petitioner u/s 73 of the Bihar Goods and Services Tax Act, 2017 even without waiting for 30 days statutory time mentioned in the show cause notice dated 11.02.2020 itself wherein the petitioner was granted time up till 11.03.2020, but the final order was passed without waiting for 11th March, 2020, which is in gross violation of Section 73, sub-clause (8) of the Bihar Goods and Services Tax Act, 2017 as well as in gross violation of Principle of Natural Justice.

ii. For setting aside the order dated 05.07.2021, passed by Additional Commissioner (Appeal) State Taxes, Purnea Division, Purnea as contained in Memo No. 517 dated 05.07.2021, whereby the appeal filed by the petitioner was rejected.

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

Undisputedly, minimum statutory period of 30 days mandated under the provisions of Section 74(A) of CGST/BGST Act, 2017 was not afforded to the petitioner for making payment due and prior to the expiry of 30 days, the assessing officer proceeded to pass the order, ex parte in nature. The notice dated 11.02.2020 (Annexure-1) directed the petitioner to file reply on 11.03.2020 whereas the final order was passed on 09.03.2020 which was within the period of 30 days. It is the mandate of law that 30 days' period has to be afforded to the parties, which was not done in the instant case. Against the final order dated 09.03.2020, the petitioner preferred an appeal which was rejected ex parte vide order dated 05.07.2021 without considering the contentions raised in the appeal.

As such, on this ground alone, we quash the notice dated 11.02.2020 (Annexure-1), the order of assessment dated 09.03.2020 (Annexure-2) as also the appellate order dated 05.07.2021, with the direction to the assessing officer to issue a fresh notice in the light of the statutory provisions and pass an appropriate order in accordance with law. All proceedings be positively complied with in these matters.

Petition is disposed of in the following terms:

(a) 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;

(b) 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.

(c) 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;

(d) 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.

(e) Petitioner undertakes to appear before the Assessing Authority on 19th of April, 2022 at 10:30 A.M., if possible through digital mode;

(f) The Assessing Authority shall decide the case on merits after complying with the principles of natural justice;

(g) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

(h) During pendency of the case, no coercive steps shall be taken against the petitioner.

(i) The Assessing Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(j) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(k) 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;

(l) The Assessing Authority shall pass a speaking order, assigning reasons, copy whereof shall be supplied to the parties;

(m) Liberty reserved to the petitioner to challenge the order, if required and desired;

(n) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(o) 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;

(p) We have not expressed any opinion on merits and all issues are left open;

(q) If possible, proceedings during the time of current Pandemic [Covid-19] be conducted through digital mode;

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	11.04.2022
Transmission Date	