IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4587 of 2022

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M/s Hraday Kumar Yadav, (Sole Proprietor firm) having its registered office at Piluwaha, W. No. 07, P.S. Jadia Supaul, through its proprietors Mr. Hraday Kumar Yadav.

... ... Petitioner/s

Versus

1. The Union of India, through the Secretary, Ministry of Finance, Department of Revenue, having its office at Room No. 46. North Block, P.O. and P.S. North Block, New Delhi - 110001.
2. The Central Board of Indirect Taxes and Customs, through its Chairman, Ministry of Finance, Department of Revenue, having its office at North Block, P.O. and P.S. North Block, New Delhi - 110001.
3. The Commissioner of Central Goods and Services Tax and Central Excise, Patna having its office at New Secretariat, Patna, Bihar.
4. Joint Commissioner of State Tax, Circle Supaul, Bihar.
5. Assistant Commissioner of State Tax, Circle Supaul, Bihar.
6. Additional Commissioner (Appeal), Purnea Division, Purnea.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anurag Saurav, Advocate Mr. Abhinav Alok, Advocate Mr. Priyajeet Pandey, Advocate
For the Respondent/s	:	Dr. K. N. Singh, ASG Mr. Anshuman Singh, Sr. SC, CGST & CX
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 : 05-04-2022

The petitioner has prayed for the following relief/s :-

(i) For Issuance of an appropriate writ/ order/ direction for setting aside order bearing reference no. **ZA100320011519C** dated 08.03.2020 passed by Assistant Commissioner of State Tax jurisdiction, Supaul, Bihar whereby and where under tax (along with interest and penalty) amounting Rs. 12,99,408/- has been imposed by the respondent under section 73 and 74 of BGST Act read with Rule 142 of BGST Rules, 2017 and the said proceeding has been initiated by the respondent authorities on the ground that a deduction of TDS in the name of petitioner were reflecting in GSTR-7 of some deductor and the same has not been disclosed by the petitioner in their return.

(ii) For setting aside order dated 09.03.2020 passed by Assistant Commissioner of State Tax Jurisdiction, Supaul, Bihar whereby and where under an amount of Rs. 12,99,408/- has been imposed on the petitioner by respondent authority on the ground of not disclosing accurate turnover in the month of June,2019.

(iii) For setting aside the demand notice issued in the Form of GST DRC 07 dated 08.03.2020 whereby and where under a tax amounting Rs. 12,99,408/- has been imposed.

(iv) For setting aside order dated 05.02.2021 issued by Respondent Appellate Authority whereby and where under the appeal filed by the petitioner has been dismissed on the ground of limitation.

(v) For restraining the respondent authorities for issuance of DRC 13 for recovery of tax amount through the Bank account attachment.

(vi) For issuance of an appropriate Writ(s), order(S), and/or direction(s), as Your Lordships may deem fit and proper in the facts and circumstances of this case in the interest of justice.

It is brought to our notice that vide impugned order dated 05.02.2021, passed by the Respondent No. 6 namely the Additional Commissioner (Appeal), Purnea Division, Purnea, the appeal of the petitioner against the order dated 08.03.2020, passed by Respondent No. 5, namely The Assistant Commissioner of State Tax, Circle Supaul; and summary of order dated 09.03.2020 in Form GST DRC-07, 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 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; (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 05.02.2021 passed by the Respondent No. 6 namely the Additional Commissioner (Appeal), Purnea Division, Purnea, and the order dated 08.03.2020 passed by Respondent No. 5, namely the The Assistant Commissioner of State Tax, Circle Supaul; and summary of order dated 09.03.2020 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 19th of April, 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)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	11.04.2022
Transmission Date	