IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5435 of 2020

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M/s Shirdi Sai Electricals Ltd. having its office at Flat No.-406, R G S Green Apartment, Rajapur, S.K. Puri, Patna, Bihar 800001 through its Authorized Representative, Avasarala Srinivas, Aged about 55 years (M), Son of Late Avasarala Venu Gopal, residing at 1-11-240/3/A/ Shyamlal Building, P.O. and P.S.-Begumpet, Dist-Hyderabad, Andhra Pradesh.

... ... Petitioner/s

Versus

1. State of Bihar through the Commissioner-cum-Secretary, Commercial Taxes, Govt. of Bihar, Patna.
2. Joint Commissioner of State Tax, Patna Central, Patna, Office of the Joint Commissioner of State Tax, Patna Central Circle, Anta Ghat, Patna 800001.
3. Commissioner of State Tax, Patna.
4. South Bihar Power Distribution Company Limited, I, Superintending Engineer Building, Fort Kila, Munger-811201.
5. North Bihar Power Distribution Company Limited Electricity Supply Circle, Motihari, 3rd Floor DCR Building, Kachahari, Motihari, East Champaran, Bihar-845401.
6. IDBI Bank, Kashi Place Complex, Dak Bungalow Road, Opp-Hira Place Patna.
7. The Secretary, Department of Revenue, Ministry of Finance, Govt. of India.
8. The Chief Commissioner of Central GST and Central Excise, Govt. of India.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Brisketu Sharan Pandey, Advocate
For the State	:	Mr. Vikash Kumar (SC-11)
For Respondent no.6	:	Mrs. Sheela Sharma, Advocate
		Mr. Shivenda Kr. Ray, Advocate
For SBPDCL	:	Mr. Kumal Tiwary, Advocate

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

Date : 12-05-2022

Heard learned counsel for the parties.

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

> "1 (i) Issue a writ of mandamus or any other appropriate writ quashing/setting aside the summary best-judgment assessment orders passed under Section 62 of the CGST Act, 2017 for the Months of June 2019 to September 2019, November 2019 and December 2019 and consequently the recovery notices dated 10.02.2020 and 26.02.2020 issued in Form DRC-13 to Respondents No. 4, 5 and 6, under Section 79 of the CGST Act, 2017; and/or
>
> (ii) Pass any such other order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

According to the petitioner, no amount is due and payable and the recovery notices (Annexure-P/7 series) dated 10.02.2020 and 26.02.2020, issued in Form DRC-13 stand issued without application of mind. The order is *ex facie* illegal. Also under similar circumstances with respect to another assessment, the State was electrified with the withdrawal of similar impugned order.

Shri Vikash Kumar, learned Standing Counsel No. 11, invites our attention to an order passed by this Bench which reads as under;

> "Petitioner has prayed for the following relief(s):-
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> "a) For issuance of a writ in the nature of certiorari for quashing of an appellate order dated 05.03.2020

issued vide memo number 51 Bhagalpur whereby the appeal preferred by the petitioner has been rejected;

b) For issuance of a writ in the nature of certiorari for quashing of the ex parte order of assessment dated 14.09.2019 issued vide reference number 690 in form GST ASMT- 13 by the Respondent No. 3.

c) For holding and a declaration that once the petitioner has already filed a statutory return in form GSTR 3B for the month of July 2019, the impugned order of assessment dated 14.09.2019 would stand merged with the said return insofar as the actual figures of purchase, sale and liability of tax admitted and paid by the petitioner is concerned;

d) For further holding and a declaration that the determination of tax and interest liability under section 62 of the Goods And Services Tax Act, 2017 (hereinafter referred to as "the act" for short) is based on absolute presumption of figures and cannot be a substitute for actual figures of purchase, sale, tax liability admitted by the petitioner in the return for the tax period in question;

e) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case."

Petitioner, inter alia, has assailed the order dated 5.3.2020 passed by Additional Commissioner of State Taxes (Appeal), Bhagalpur Division, Bhagalpur, in Appeal Case No. BHGST 07/19-20, on the ground that contentions raised in the appeal, more specifically qua applicability of the provisions of Sections 16, 37, 39, 44 and 62 of the Central Goods and Services Tax Act, 2017 (hereinafter to be referred as 'the Act'), have not been considered at all.

It is also brought to our notice that the Tribunal envisaged under the provisions of the said Act has yet not been constituted, prompting the petitioner to initiate the instant proceedings instituted under Article 226 of the Constitution of India.

Having heard learned counsel for the parties, we are of the considered view that in the attending facts and circumstances, it would be only more appropriate, as is also so submitted by Shri Gautam Kumar Kejriwal, learned counsel for the petitioner, that the petitioner approaches the appellate authority highlighting the issues raised before this Court, as also pointing out the errors apparent on the face of record, if any, enabling the authority to reconsider the petitioner's case based on the material so placed.

Shri Pawan Kumar, learned counsel appearing for the State/authority, states that petitioner failed to exercise his statutory right as envisaged under Section 62 of the Act, leaving no option with the authority to pass the order.

Responding to the same, Shri Kejriwal, learned counsel, argues that even after passing of the order under Section 62 of the Act, petitioner has a right in law, to take recourse to the provisions, prior thereto.

Well, on merits, we do not express any opinion and leave it to the wisdom of the appellate authority to consider all these issues, to the attending facts.

We are inclined to pass such an order, more so when we notice that such pleas were taken not for the first time before this Court but before the appellate authority.

As such, as jointly prayed for, present petition is being disposed of in the following terms:-

(a) Petitioner shall appear before the appellate authority, either through physical or digital mode on 30.11.2020 at 10.30 A.M.;

(b) The appellate authority shall consider all aspects and take a decision, preferably within a period of two months thereafter;

(c) All issues are left open for we have not expressed any opinion on merits;

(d) It shall be open to the appellate authority to pass a fresh order as per law if so required.

(e) Till such time decision is taken by the authority, no coercive action for recovery of the amount shall be taken against the petitioner.

No other submission is made on behalf of either parties.

Interlocutory application, if any, shall also stand disposed of.

Petition stands disposed of."

Learned counsel has no objection to similar order being passed also in the instant case.

As such, we quash and set aside the assessment orders passed under Section 62 of the CGST Act, 2017 for the Months of June 2019 to September 2019, November 2019 and December 2019 and the recovery notices/order of attachment (Annexure-P/7 series) dated 10.02.2020 and 26.02.2020, issued in Form DRC-13 making the directions issued in the case of

Lalan Kumar Vs. The State of Bihar & Ors. (supra) applicable *mutatis mutandi* in the instant case, adding further that petitioner shall appear before the assessing officer on 23.05.2022 at 10:30 A.M.

The instant petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	16.05.2022
Transmission Date	