IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5741 of 2022

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M/s Dhanvantari Medico a partnership firm, having its office at Karbigahia, Patna through its partner Rajeshwar Singh, gender-male, age about 42 years, Son of Anant Singh, Resident of House of Pappu Singh, Bihari Saw Mill Compound, Sampatchak, District- Patna. ... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. Addl. Commissioner of State Tax (Appeal), Patna West Circle, Patna.
3. Asst. Commissioner of State Tax, Patna South Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ajit Kumar, Advocate

For the Respondent/s : Mr.Vikash Kumar (Sc 11)

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-04-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s).

a) For issuance of a writ in the nature of certiorari for quashing of the appellate order (Annexure-2 Series) dated 02.03.2022 in Appeal Case No. GST/PS-21/21-22 for the financial year 2018-19 and GST/PS-20/21-22 for the financial year 2019-20 respectively disposed of by a common order by the respondent no.2 vide memo number 4364 whereby the appeal preferred by the petitioner against the order dated 11.02.2021 passed by the respondent no.3 for the financial year 2018-19 and for the financial year 2019-2020 respectively under Section 73 read with Section 50 of the Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as the Bihar Act 2017 for short) has been dismissed through an order absolutely cryptic, nonspeaking, in a mechanical manner and in teeth of Section 107(12) of the Bihar Act 2017 and ;

b) For further issuance of a writ in the nature of certiorari for quashing of the demand orders (Annexure 1 Series) dated 11.02.2021

passed by the respondent no.3 under Section 73 read with Section 50 of the Bihar Act 2017 imposing liability of tax and interest as well as penalty against the petitioner for the financial year 2018-19 and 2019-20;

c) For further holding and a declaration that the effect and operation of Section 16 (2) (c) of the Bihar Act 2017 as against the petitioner would depend upon the simultaneous enquiry, scrutiny of the returns furnished by the corresponding supplier and action against him in terms of the provisions of the Bihar Act 2017 and Central Goods And Services Tax Act, 2017 (hereinafter referred to as the Central Act 2017 for short);

d) For further holding and a declaration that the action of the respondent No.3 in imposing liability of tax and interest against the petitioner for a transaction with respect to which the petitioner had already parted with the tax amount at the hands of the connected supplier without any action against such supplier of the petitioner is illegal, without jurisdiction and unsustainable in the eye of law;

e) For further holding and a declaration that the law under the Bihar Act 2017 and Central Act 2017 requires the petitioner to pay the statutory tax to the supplier on point of purchase of goods or services and it is the bounden duty of such supplier to hand over the amount of tax collected from the petitioner to the government as the supplier stands as a trustee as against the government in so far as collection and payment of tax from the petitioner is concerned.

f) For further holding and a declaration that the denial of input tax credit to the petitioner by the respondents on account of default committed by the supplier coupled with no action against the supplier to recover the tax already paid by the petitioner is in teeth of the principal of law held in the maxim "lex non cogit ad impossiblia" as it would be impossible for the petitioner to make the supplier hand over the amount of tax to the government;

g) For further issuance of a direction or order restraining the respondents from taking any coercive action for recovery of the amount in demand from the petitioner during the pendency of the present writ application or for a direction to refund of the part or whole of the amount in case recovered from the petitioner;

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

Petitioner has prayed for quashing of the order dated 02.03.2022 passed by Respondent No. 2, namely Addl. Commissioner of State Tax (Appeal), Patna West Circle, Patna in Appeal Case No. GST/PS-21/21-22 and GST/PS-20/21-22 (Annexure-2 series); order dated 11.02.2021 passed by Respondent No. 3, namely Assistant Commissioner of State Tax, Patna South Circle, Patna; order dated 11.02.2021 passed in Reference No. ZD100221008613B and summary of the order dated 11.02.2021 (Annexure-1 series).

The orders are ex parte in nature.

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 02.03.2022 passed by Respondent No. 2, namely Addl. Commissioner of State Tax (Appeal), Patna West Circle, Patna in Appeal Case No. GST/PS-21/21-22 and GST/PS-20/21-22 (Annexure-2 series); order dated 11.02.2021 passed by Respondent No. 3, namely Assistant Commissioner of State Tax, Patna South Circle, Patna; order dated 11.02.2021 passed in Reference No. ZD100221008613B and summary of the order dated 11.02.2021 (Annexure-1 series);

(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 16th of May, 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)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	