IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6697 of 2022

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M/s Shree Murliwala Textile a proprietorship concern having its Office at Sada Sukh Katra, M.G Road, District- Katihar- 854105 through its Proprietor of M/s Shree Murliwala Textile, Rajesh Agarwal, aged about 43 years (Male), Son of Bikha Ram Agarwal, Resident of Chanakya Tower, 2nd Floor, Amla Tola, P.S.- Katihar, District- Katihar.

... ... Petitioner/s

Versus

1. The Union of India through The Secretary, Department of Revenue, Ministry of Finance, New Delhi.
2. The Secretary, Department of Revenue, Ministry of Finance, Government of India, New Delhi.
3. The Central Board of Indirect Taxes and Customs, Department of Revenue, Ministry of Finance , Government of India, New Delhi.
4. The Chief Commissioner of Central Taxes, 3rd Floor, Central Revenue (Annex) Building, Birchand Patel Path, Patna.
5. The State of Bihar through the Commissioner-cum-Secretary, Commercial Taxes, Govt. of Bihar, Patna.
6. The Commissioner of State Tax, Vikash Bhawan, Patna.
7. The Additional Commissioner State Taxes (Appeal), Purnea Division, Purnea.
8. The Assistant Commissioner of State Taxes, Katihar Circle, Katihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Abhishek Kumar, Advocate
For the Respondent/s	:	Dr. K.N. Singh (ASG)
		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 : 09-05-2022

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

a. For issuing writ of certiorari for quashing the order dated 22.03.2021 and the consequent Summary of Order (demand order issued in FORM GST DRC 07) dated 20.02.2021 passed by Assistant Commissioner of State Taxes, Katihar Anchal, Katihar (Respondent No.8), issued for the tax period April 2019 to March 2020 whereby and whereunder tax, interest and penalty totaling to Rs. 7,60,617.78 (Tax Rs. 6,21,032/-, Interest Rs.77,484/- and Penalty Rs.62,102/-) has been demanded from the Petitioner.

b. For issuing writ of certiorari for quashing the order dated 14.09.2021 and the consequent Form GST APL-2 dated 15.09.2021 passed by Additional Commissioner of State Taxes, Purnea Division, Purnea (Respondent No.7) whereby and whereunder the appeal filed by the petitioner was rejected only on the ground of non-submission of certified copy of the impugned order.

c. For staying the operation of the order dated 20.02.2021 and the consequent order in FORM DRC 07 dated 22.02.2021 (Annexure P/1 Series) till the pendency of this case.

d. To pass any other order/orders which it may deem fit in the facts and circumstances of the case and within the ends of equity, justice and good conscience."

It is brought to our notice that vide impugned order dated 14.02.2021 passed by the Respondent No. 7 namely the

Additional Commissioner of State Taxes (Appeal), Purnea Division, Purnea and consequent Form GST APL-2 dated 15.09.2021, in Appeal No.(ARN) AD1005210003491, the appeal of the petitioner against the order dated 22.03.2021 and the consequent summary of order (demand order issued in FORM GST DRC 07) dated 20.02.2021 passed by Respondent No. 8, namely the The Assistant Commissioner of State Taxes, Katihar Anchal, Katihar, for the tax period April, 2019 to March, 2020, has been rejected on the ground of non-submission of certified copy of the original order.

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 sufficient reasons 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 14.02.2021 passed by the Respondent No. 7 namely the Additional Commissioner of State Taxes (Appeal), Purnea Division, Purnea and consequent Form GST APL-2 dated 15.09.2021, in Appeal No.(ARN) AD1005210003491, and the order dated 22.03.2021 and the consequent summary of order (demand order issued in FORM GST DRC 07) dated 20.02.2021 passed by Respondent No. 8, namely the The Assistant Commissioner of State Taxes, Katihar Anchal, Katihar;

(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 29.05.2022 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)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	12.05.2022
Transmission Date	