

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7287 of 2022

=====

M/s M.K. Mobiles a proprietorship firm having its place of business at Ward No.2, Sultanganj, Munger Road, Bhagalpur, Bihar- 813213 through its proprietor namely Atish Kumar, male, aged about 39 years, Son of Amar Nath Choudhary, Resident of Balu Ghat Road, Ward No.- 03, P.O. and P.S.- Sultanganj and District- Bhagalpur, Bihar- 813213.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeals), Bhagalpur Division, Bhagalpur.
3. The Assistant Commissioner of State Taxes, Bhagalpur Circle, Bhagalpur. (January 2020 - March 2020)

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Gautam Kumar Kejriwal, 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 : 20-06-2022

Petitioner has prayed for the following relief(s):

“a) For issuance of writ in the nature of certiorari for quashing of the order dated 25.11.2021 issued vide memo number 362 Bhagalpur and a summary of demand in form GST-APL-04 dated 26.11.2021 passed and issued by the respondent number 2 whereby the appeal preferred by the petitioner under section 107 of the Central Goods And Services Tax Act, 2017 (hereinafter referred to as the central act 2017 for short) and Bihar Goods And Services Tax Act 2017 (hereinafter referred



to as the Bihar act 2017 for short) has been rejected;

b) For issuance of writ or order in the nature of certiorari for quashing of the nonspeaking and mechanical order dated 29.01.2021 and summary of order issued in form GST DRC-07 dated 29.01.2021 by the respondent number 3 in exercise of powers under section 73 of the Central Act 2017 and Bihar Act 2017;

c) For further issuance of writ in the nature of certiorari for quashing of the notice of demand issued in form GST DRC – 13 dt. 25.02.2022 which is consequential to the impugned orders passed by the respondent no. 2 and 3;

d) For further restraining the respondents from taking any coercive action against the petitioner for recovery of the amount of tax, interest and penalty in terms of the impugned orders during the pendency of the present writ application;

e) For further holding and a declaration that the petitioner cannot be deprived of the benefit of input tax credit for the month of January 2020 to March 2020 as substantive part of the calendar year 2020 was a victim of coronavirus pandemic which had paralyzed all activities in human life;

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

It is brought to our notice that vide impugned order dated 25.11.2021 passed by the Respondent No. 2, namely the Additional Commissioner of State Taxes (Appeals), Bhagalpur Division, Bhagalpur, in Appeal No. AD100421002258W, the appeal of the petitioner against the order dated 29.01.2021 passed by Respondent No. 3, namely The Assistant Commissioner of State



Taxes, Bhagalpur Circle, Bhagalpur, under Section 73 of CGST Act, 2017; and summary of order dated 29.01.2021 in Form GST DRC-07 for the period January, 2020 to March, 2020 has been rejected in violation of principles of natural justice by an ex parte 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 25.11.2021 passed by the Respondent No. 2, namely the Additional Commissioner of State Taxes (Appeals), Bhagalpur Division, Bhagalpur, in Appeal No. AD100421002258W, the order dated 29.01.2021 passed by Respondent No. 3, namely The Assistant Commissioner of State Taxes, Bhagalpur Circle, Bhagalpur, under Section 73 of CGST Act, 2017; and summary of order dated 29.01.2021 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 18th of July, 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, 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	23.06.2022
Transmission Date	

