IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8344 of 2022

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M/s Amarpali Cylinders Pvt. Ltd. MUP IV P, Gidha Industrial Area, Gidha, District Ara through its Authorised Signatory Prakash Singh Bisht, Aged about 45 Years, Gender Male son of Mathura Singh Bisht, Resident of RZ-49A, Somesh Vihar, Chhawla, P.S. Chhawla, South West Delhi- 110071.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner, State Tax (Appeals), Central Division, Patna.
3. The Deputy Commissioner, State Tax, Patna Special Circle, Patna.

... ... Respondent/s

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Appearance :

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

For the Respondent/s : 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 : 20-06-2022

Heard learned counsel for the parties.

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

(i) For consequential writ or order for quashing of order dated 21.01.2019 passed U/S 73 of GST Act, 2017 whereby the Tax, interest and Penalty to the tune of Rs.49,25,660.89 has been imposed rejecting the claim of Transitional Credit and Demand Notice in Form DRC-07 has been issued in utter violation of the principles of natural justice;

(ii) For issuance of consequential writ or order for quashing of order dated 09.03.2021 issued vide Memo No. 189 dated 09.03.2021 whereby the Appeal preferred by the petitioner has been rejected without application of judicial mind, without considering the grounds of appeal and without giving proper opportunity of produce evidence in support of its claim;

(iii) For further issuance of a direction or order restraining the Respondent NO.3 from taking coercive action for recovery of the amount in demand from the petitioner during the pendency of the present writ petition or for a direction to refund of the amount in case recovered from the petitioner.

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

It is brought to our notice that vide impugned order dated 09.03.2021, passed by the respondent No.2, namely, the Additional Commissioner of State Taxes(Appeals), Central Division, Patna in Appeal Case No. AD100419000233V, the appeal of the petitioner against the order dated 21.01.2019, issued by the respondent no. 3 namely the Deputy Commissioner, State Tax, Patna Special Circle, Patna, has been rejected affirming the order of the Assessing Authority.

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, 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, contentions raised not considered by the Assessing Authority as well as the Appellate Authority; (b) order passed does not assign any reason sufficient, even decipherable from the record, as to how the officer could determine the amount due and payable by the assessee. The order passed in violation of the principles of natural justice, entails civil consequences. 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 09.03.2021, passed by the respondent No.2, namely, the Additional Commissioner of State Taxes(Appeals), Central Division, Patna in Appeal Case No. AD100419000233V, the order dated 21.01.2019, issued by the respondent no. 3, namely, the Deputy Commissioner, State Tax, Patna Special Circle, Patna;

(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 Authority. This shall be done within four weeks from the date of passing of the order;.

(d) 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.

(e) Petitioner undertakes to appear before the Assessing Authority on 05.07.2022 at 10:30 A.M.;

(f) The Assessing Authority shall decide the case on merits after complying with the principles of natural justice;

(g) 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:

(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 assessment proceeding, 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 before this Court, 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 reasonable dispatch;

(q) We have not expressed any opinion on merits and all issues are left open;

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)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	