IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8438 of 2022

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Aksa Iron and Coke Industries Private Limited, through its Director having office situated at Aadaresh Nagar, Langarpur, P.S. - Mariwa, District - Siwan, Bihar - 841226.

... ... Petitioner/s

Versus

1. The State of Bihar, through the State Tax Additional Commissioner (Appeal), Saran Division, Chhapra.
2. The Joint Commissioner of State Tax, Siwan.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Ashish, 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 MR. JUSTICE S. KUMAR)

Date : 21-06-2022

Heard learned counsel for the parties.

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

> "That this writ application is directed against the order dated 28/09/2019 passed by State Tax Joint Commissioner (In charge), Siwan -Anchal, Siwan under section 74 of Bihar Goods and Service Tax Act, 2017 whereby and whereunder tax has been fixed as Rs. 50,03,665.16/ - for the month of May, 2019, Rs. 1803619.12/- for the month of June, 2019 alleging about the non-existent firm, Petitioner and the order dated 02 /03 / 2021 passed by the State Tax Additional Commissioner (Appeal), Saran Division, Chhapra issued under Memo No. 38 affirming the above order."

It is submitted on behalf of the petitioner that Aska Iron Coke Industries Private Ltd. is engaged in the business of buying and selling Coal and has its registered office in Jharkhand and one business office at Siwan which is registered under the GST Act-2017 and due to non suitability of the place of the office, same was shifted to a new place and a notice dated 02.08.2018 was served to the petitioner while the office was under process of shifting alleging therein as to why registration should not be cancelled on the ground that business place was found non-existent during field verification and reply was sought within 7 days and same was accordingly replied.

Subsequently, a notice dated 16.08.2019, was issued to the petitioner under section 70 of the GST Act in which new address of petitioner was mentioned and petitioner submitted his reply and had personally appeared with all required documents. Petitioner was thereafter served order dated 13.09.2019 rejecting the reply and was directed to resubmit the documents and petitioner did so, however, without any notice under Section 74 of the Act, impugned order dated 28.9.2019 was passed under Section 74 of the Act.

Although proceeding was initiated with respect to place of office being non-existent but the order dated 28.09.2019, was passed by respondent no. 3 under section 74 of the Bihar Goods and Service Tax Act, 2017 imposing tax/ penalty/ fine of Rs. 50,03,665.161/- for the month of May-2019 and Rs. 18,03619.12/- for the month of June-2019 without any notice as required under Section 74 of the Bihar Goods and Service Tax Act, 2017. Appeal preferred was also dismissed by order dated 02.03.2021 passed by respondent no. 1.

On perusal of materials placed before this Court, it appears that initially proceedings were initiated for cancellation of registration of firm on the ground that place of business was found to be non-existent but without issuing notice under section 74 of the Bihar Goods and Service Tax Act, 2017 order of tax/ penalty/ fine under section-74 of the Bihar Goods and Service Tax Act, 2017 has been imposed by impugned order.

Accordingly, the order as impugned passed by the Assessing Authority 28.09.2019 (Annexure-6) as well as appellate order dated 02.03.2021 (Annexure-7) are set aside with liberty to the respondents to initiate fresh proceeding after issuing notice to the petitioner under Section 74 of the Bihar Goods and Service Tax Act, 2017 and pass fresh order after giving reasonable and adequate opportunity of hearing to the petitioner.

The writ petition is, accordingly, disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	NA
Uploading Date	29.06.2022
Transmission Date	NA