IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11853 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
		Mr. Ram Shankar Kumar, Advocate
		Mr. Sudarshan Kumar, Advocate
For the Respondent/s	:	Mr.Vivek Prasad (Gp7)

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

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 31-08-2022

Petitioner has prayed for the following relief:-

a] For issuance of a writ in the nature of certiorari for quashing of an appellate order dated 14.05.2022 issued vide memo number 299 Bhagalpur whereby the appeal preferred by the petitioner has been rejected by the respondent number 2;

b] For issuance of a writ in the nature of certiorari for quashing of the ex parte order of assessment dated 26.09.2020 issued vide reference number 9421 in form GST ASMT-13 as well as summary of the order in form no. GST DRC-07 issued by the respondent number 3;

c) For holding and a declaration that the statutory return in form GSTR 3B filed by the petitioner for the month of July 2020 is valid and the declaration made therein by the petitioner holds primacy over the figures determined by the respondent number 3 in terms of the best judgment assessment made under Section 62(1) of the Goods And Services Tax Act, 2017 (hereinafter referred to as "the act" for short);

d) For holding and a declaration that once the petitioner has already filed a statutory return in form GSTR 3B for the month of July 2020, the impugned order of assessment dated 26.09.2020 would stand merged with the said return insofar as the actual figures of purchase, sale and liability of tax admitted and paid by the petitioner is concerned;

e) For further holding and a declaration that the determination of tax and interest liability under section 62 of the Goods And Services Tax Act, 2017 (hereinafter referred to as "the act" for short) is based on absolute presumption of figures and cannot be a substitute for actual figures of purchase, sale, tax liability admitted by the petitioner in the return for the tax period in question;

f) For further holding and a declaration that Section 16(2), 16(4), 39 read with Section 46 and 47 of the act permits filing of a monthly return after due date and impart all characteristics of a return valid and acceptable in terms of law;

g) For further holding a declaration that the nature of jurisdiction conferred under Section 62(1) of the act to make a best judgment assessment of an assessee having defaulted in filing a monthly return is not penal in nature rather it is a discretionary power exercisable to fill up the gap in the records maintained for the sale, purchase turnover, tax liability admitted and paid and input tax credit to which an assessee may be entitled to for a particular month and therefore once a valid return is filed by the assessee even after due date but with due compliance of section 47 of the act, the best judgment assessment made under section 62(1) shall have to be recalled and the return so filed would be required to be considered by the assessing authority;

h) For further holding a declaration that Section 62(2) of the act is directory and not mandatory and therefore any return validly filed in terms of section 39 read with section 47 of the act shall replace the best judgment assessment made under Section 62(1) irrespective of the bar of limitation prescribed under section 62(2) of the act;

i) For further issuance of a direction to the respondent concern especially to the respondent no. 3 to consider and condone the delay in filing of the return;

j) 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;

k) For grant of any other relief or relief 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 14.05.2022 passed by the Respondent No. 2, namely, Additional Commissioner of State Taxes (Appeal), Patna West Circle, Patna in Appeal Case No. GST/PS-55/2021-22, the appeal of the petitioner against the order dated 26.09.2020 passed by the Respondent No. 3 namely Assistant Commissioner of State Taxes, Patna South Circle, Patna in GST ASMT-13 (Reference No. 9421) as well as summary of order in Form No. GST DRC-07, has been rejected.

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 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 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 14.05.2022 passed by the Respondent No. 2, namely, Additional Commissioner of State Taxes (Appeal), Patna West Circle, Patna in Appeal Case No. GST/PS-55/2021-22, order dated 26.09.2020 passed by the Respondent No. 3 namely Assistant Commissioner of State Taxes, Patna South Circle, Patna in GST ASMT-13 (Reference No. 9421) as well as summary of order in Form No. 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 19th September,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) 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;

(i) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

(j) During pendency of the case, no coercive steps shall be taken against the petitioner.

(k) The Assessing Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(l) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(m) 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;

(n) The Assessing Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

(o) Liberty reserved to the petitioner to challenge the order, if required and desired;

(p) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(q) 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;

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

(s) 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)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	01.09.2022
Transmission Date	