IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12416 of 2022

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M/S Maa Shyampati Construction, Tiwari Tola, Maner, P.S. Maner, District Patna through its Authorized Signatory Arun Kumar Yadav, Aged about 42 years, Gender Male, Son of Deep Narayan Ray, Resident of Tiwari Tola, Newati Mohalla, P.S. Maner, District Patna, Bihar- 801108

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. The Principal Chief Commissioner, CGST, Central Revenue Building, Birchand Patel Path, Patna.
3. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna.
4. The Additional Commissioner of State Taxes (Appeals), Patna West Division, Patna.
5. The Assistant Commissioner of State Taxes, Danapur Circle, Danapur, District Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Alok Kumar, Advocate
For the UOI	:	Mr. Anshuman Singh, Sr. SC CGST & CX
For the State	:	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 : 01-09-2022

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

(i) For consequential writ/writs or order/orders for quashing of orders dated 05.08.2022 issued vide Memo No. 1362, 1363 and 1364 passed by the Respondent No. 4 in Appeal Case No. GST/DN-28/22-23, GST/DN-27/22-23 and

GST/DN-29/22-23 whereby the appeals have been dismissed at the admission stage on the ground of delay;

(ii) For further issuance of consequential writ/writs or order/ orders for quashing of ex-parte non-speaking orders and Demand Notices in Form DRC-07 dated 27.01.2020, 04.02.2021, 11.01.2021 and 23.11.2021 passed by the Assistant Commissioner State Tax, Danapur Circle, Danapur, District Patna whereby the Registration of the petitioner has been cancelled and thereafter the Tax, Interest and Penalty to the tune of Rs. 9,69,019.00, Rs. 15,62,122.13 and Rs. 8,50,763.24 respectively have been imposed under Section 73(9) of the GST Act, 2007 without giving proper opportunity of hearing;

(iii) For further issuance of a direction or order restraining the Respondent No. 5 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;

(iv) For grant of any 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 05.08.2022 passed by the Respondent No. 4 namely Additional Commissioner of State Taxes (Appeal), Patna West Division, Patna in Appeal Case No. GST/DN-29/22-23, GST/DN-28/22-23 and GST/DN-27/22-23 the appeals of the petitioner against the orders dated 27.01.2020, 23.11.2021 and 13.02.2021 respectively passed by the Respondent No. 5, namely, the Assistant Commissioner of State Taxes, Danapur Circle, Danapur and demand notice dated 11.01.2021, 04.02.2021 and 23.11.2021 have been rejected merely on the grounds of being barred by limitation. Orders were *ex parte* in nature.

In our considered view, the delay stands sufficiently explained on account of COVID restrictions.

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 *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. 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 orders all dated 05.08.2022 passed by the Respondent No. 4, namely, Additional Commissioner of State Taxes (Appeal), Patna West Division, Patna in Appeal Case No. GST/DN-29/22-23, GST/DN-28/22-23 and GST/DN-27/22-23 and the orders dated 27.01.2020, 23.11.2021 and 13.02.2021 as well as demand notice dated 11.01.2021, 04.02.2021 and 23.11.2021 passed by the Respondent No. 5 namely the Assistant Commissioner of State Taxes, Danapur Circle, Danapur.

(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 each 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 of 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) The proceedings 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/-

AFR/NAFR	
CAV DATE	
Uploading Date	07.09.2022
Transmission Date	