

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17202 of 2021

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M/s. Shaurya and Company a Proprietorship Firm having its Office at 23, Kaveri Apartment, Bandar Bagicha, Opp Santosh Apartment Frazer Road, Patna, through its Proprietor Gopaal Das Jakhodia, aged about 65 years (Male), Son of Balkishna Das Jakhodia, Residing at Flat No. 23, Kaveri Apartment, Bandar Bagicha, Frazer road Patna, Opp 9 to 9, Phulwari, Patna P.O. - Kotwali, P.S. - Kotwali Patna, District- Patna State Bihar, PIN 800001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
2. The Commissioner cum - Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
3. The Additional Commissioner State Tax (Appeals), West Division, Patna.
4. The Joint Commissioner of State Tax, Gandhi Maidan Jurisdiction, Gandhi Maidan, Patna West, Bihar.
5. The Assistant Commissioner of State Tax, Gandhi Maidan Jurisdiction, Gandhi Maidan, Patna West, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Brisketu Sharan Pandey, Adv Mr. Abhishek Kumar, Adv Mr. Vijaya Kumar, Adv
For the Respondent/s	:	Mr.Vikash Kumar (SC11)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-03-2022

Heard learned counsel for the parties.

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

(i) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the assessment order dated 30.12.2020 (Annexure-P/1) issued by Assistant Commissioner of State Tax, Gandhi Maidan Jurisdiction, Gandhi Maidan, Patna West, Bihar (Respondent No. 5) whereby and whereunder the aforesaid Assessment Officer

has quantified the tax liability, interest and penalty for the period April 2018 to March 2019 and thereby has quantified the Tax liability, interest and penalty for the period April 2018 to march 2019 and thereby has imposed cumulative liability of Rs. 4,39,806.51/- for the aforesaid period towards IGST, SGST, CGST tax liability, interest for 547 days @ 1.5% and penalty.

(ii) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the order dated 30.12.2020 (Annexure-P/2) bearing Reference No. ZD1012200297606 issued under section 73 of GST Act (uploaded on the web portal) issued by Assistant Commissioner of State Tax, Gandhi Maidan Jurisdiction, Gandhi Maidan, Patna West, Bihar (Respondent No. 5) whereby and whereunder the aforesaid Assessment Officer has quantified the tax liability interest and penalty for the period April 2018 to March 2019 and thereby has imposed cumulative liability of Rs., 4,39,806.51 for the aforesaid period towards IGST, SGST, CGST tax liability, interest for 547 days @ 1.5% and penalty.

(iii) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the Demand DRC-07 dated 30.12.2020 (Annexure-P/3) bearing Reference No. ZD1012200297606 issued under section issued under rule 142(5) (uploaded on the web portal) issued by Assistant Commissioner of State Tax, Gandhi Maidan Jurisdiction, Gandhi maidan, Patna West, Bihar (Respondent no. 3) whereby and whereunder the aforesaid Assessment Officer has issued demand order in terms of order dated 30.12.2020 (Annexure-P/1) and accordingly raised demand towards tax liability, interest and penalty for the period April 2018 to March 2019 to tune of cumulative liability being Rs. 4,39,806.51 for the aforesaid period towards IGST, SGST, CGST tax liability interest for 547 days @ 1.5% and penalty.

(iv) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the order dated 17.08.2021 (Annexure-P/4) bearing Memo No. 1075 issued by Additional Commissioner of State Tax (Appeal), Patna West Division, Patna, Bihar (Respondent N. 3) whereby and whereunder the aforesaid Appellate Authority has rejected the appeal preferred by the petitioner against order dated 30.12.2020 (Annexure-P/1) and has affirmed the aforesaid order passed by the Assessment Officer.

(v) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the summary of demand by the appellate authority issued under FORM APL GST-04 dated 25.08.2021 (Annexure-p/5) bearing order No. ZD1008210169060 issued by Additional Commissioner of State Tax (Appeal), Patna, West Division, Patna Bihar (Respondent no. 3) whereby and whereunder the aforesaid Appellate Authority upon rejection of the appeal has affirmed the cumulative liability of Rs. 4,39,806.51/- for the aforesaid period towards IGST, SGST, CGST tax liability, interest for 547 days @ 1.5% and penalty.

(vi) For issuing writ of mandamus and thereby directing the respondent to refund a sum of Rs. 30,800/- paid by the petitioner as pre-deposit worth 10% of disputed tax amount as needed to be paid as pre-deposit (Section 107(6)(b) of Central Goods and Service Tax Act, 2017) before filing an appeal under CGST/SGST for the month April 2018 to March 2019;

(vii) For issuing writ of mandamus as a consequential relief and thereby directing the Respondents to allow the petitioner amending the return GSTR-01 to the extent that the petitioner may be allowed to upload and take benefit of Credit Note (CN) bearing CN No. 34 relating to original invoice No. S & C/T/174 dated 28.10.2018 which was inadvertently not claimed and reported while filing the

GSTR-01 by the petitioner for month of October-2018.

(viii) For issuing writ of a mandamus directing the Respondent to refund to Rs. 77,777.42/- in terms of their own assessment order dated 30.12.2018 (Annexure-P/1) affirmed by the appellate authority while issuing impugned order dated 17.08.2021 (AnnexureP/4) wherein on comparative analysis assessment officer of ITC in 3B vis-a-vis ITC in 2A the petitioner was entitled for refund of Rs. 38,888.71/- under CGST as also refund of Rs. 38,888.71/- under the SGST.

(ix) For holding that the petitioner is entitled to reverse the Input Tax Credit in the month of September 2019(next financial year) which is in terms with section 16(4) of GST Act as also in terms of Circular No. 26/26/2017-GST dated 29.12.2017 issued by Department of Revenue, Central Board of Excise and Custom, GST Policy wing.

(x) For issuing a writ of mandamus or any other appropriate writ directing the Respondents not take any coercive action including recovery from bank account and third parties until pendency of the present writ application;”

It is brought to our notice that vide impugned order dated 17.08.2021 (Annexure P/4) bearing Memo No. 1075, passed by the Respondent No. 3, namely, the Additional Commissioner of State Tax (Appeals), West Division, Patna, in Appeal No. (ARN) AD1002210043795 and summary of demand dated 25.08.2021 (Annexure P/5), in Form GST APL-04, the appeal of the petitioner against the assessment order dated 30.12.2020, passed by Respondent No. 5, namely, the Assistant Commissioner of State

Tax, Gandhi Maidan Jurisdiction, Gandhi Maidan, Patna West, Bihar, in GSTIN 10AJWPJ7870Q2ZA, under Section 73 of BGST Act, 2017; and summary of order dated 30.12.2020 in Form GST DRC-07 for the tax period Apr 2018 to March, 2019 (Reference No. ZD1012200297606), has been rejected by a cryptic, misconceived and non-speaking order.

Learned counsel for the petitioner submits that though notices have not been dealt with at all nor any reasons assigned in the order which though runs into 6 pages signed while determining the liability payable by the petitioner.

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 order dated 17.08.2021 (Annexure P/4) bearing Memo No. 1075, passed by the Respondent No. 3, namely, the Additional Commissioner of State Tax (Appeals), West Division, Patna, in Appeal No. (ARN) AD1002210043795 and summary of demand dated 25.08.2021 (Annexure P/5), in Form GST APL-04, the assessment order dated 30.12.2020, passed by Respondent No. 5, namely, the Assistant Commissioner of State Tax, Gandhi Maidan Jurisdiction, Gandhi Maidan, Patna West, Bihar, in GSTIN 10AJWPJ7870Q2ZA, under Section 73 of BGST Act, 2017; and summary of order dated 30.12.2020 in Form GST DRC-07 for the tax period Apr 2018 to March, 2019 (Reference No. ZD1012200297606);

(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 thirty 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 11.04.2022 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;

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)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	