IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13449 of 2022

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M/s SR Electricals having its office at Usha Complex, Ground Floor, Opp. ANS College, NH-31, Barh, Bihar, 803213 through its Proprietor, Ranbir Singh, aged about 65 years (M), son of Basudev Singh, Residing at 84, Sikandarpur, Sangrampur, Areraj, P.O. and P.S.-Areraj, District-East Champaran, Bihar-845411.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi.
2. The Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi.
3. The State of Bihar through the Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
4. The Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
5. The Additional Commissioner State Tax (Appeals), Bhagalpur Division, Bhagalpur, Bihar.
6. The Joint Commissioner of State Tax, Bhagalpur Circle, Bhagalpur, Bihar Office of the Joint Commissioner of State Tax, Bhagalpur Circle, Bhagalpur 812001.
7. The Assistant Commissioner of State Tax, Bhagalpur Circle, Bhagalpur, Bihar Office of the Joint Commissioner of State Tax, Bhagalpur Circle, Bhagalpur 812001.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Brisketu Sharan Pandey, Advocate Mr. Anurag Saurav, Advocate Mr. Abhinav Alok, Advocate Mr. Priyajeet Pandey, Advocater
For the State	:	Mr. Vikash Kumar, SC 11
For the UOI	:	Mr. Anshuman Singh, Sr. SC, CGST & CX

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

Date : 12-10-2022

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 summary best-judgment assessment orders in GST FORM ASMT-13 dated 16.12.2019 (Annexure-P/1) passed under Section 62 of the CGST Act, 2017 for the Month of October 2019 whereby and whereunder presumptive assessment of the said month i.e. October 2019 has been done and amount worth Rs.3,29,786/- (with break-up of Rs.1,62,938 /- as CGST, Rs.1,62,938/- as SGST with interest of Rs.1,955/- on said CGST liability and interest of Rs.1955/- on SGST liability) has been assessed as liability for the said month;

(ii) For Issuing a writ of certiorari or any other appropriate writ quashing/ setting aside the demand issued in Form DRC-07 dated 16.12.2019 (Annexure-P/2) issued in furtherance of aforesaid ASMT-13 dated 16.12.2019 whereby and whereunder on the basis of said presumptive assessment for month of October 2019 a demand Rs.3,29,786/- (with break-up of Rs.1,62,938 /- as CGST, Rs.1,62,938/- as SGST with interest of Rs.1,955/- on said CGST liability and interest of Rs.1955/- on SGST liability) has been issued against the petitioner;

(iii) For issuing appropriate writ including writ of certiorari or any other appropriate writ for quashing/ setting aside the ex-parte Appellate order dated 09.09.2021 bearing Case no. Memo No.271 passed by Respondent No. 5 for the month October 2019 (Annexure-P/9 Series) whereby and whereunder the appeal filed by the petitioner assailing the ASMT-13 dated 16.12.2019 and demand DRC-07 dated 16.12.2019 has been rejected without considering the grounds stated in the appeal;

(iv) For issuing appropriate writ including writ of certiorari or any other appropriate writ for quashing/ setting aside the ex-parte summary of demand issued in Form GST APL-04 dated 09.09.2021 issued in furtherance of Appellate order dated 09.09.2021 (Annexure-P/9 Series) for the month October 2019, whereby and whereunder the demand worth Rs.3,29,786/- (with break-up of Rs.1,62,938 /- as CGST, Rs.1,62,938/- as SGST with interest of Rs.1,955/- on said CGST liability and interest of Rs.1955/- on SGST liability) as raised by the ASMT – 13 dated 16.12.2019 (Annexure-P/1) and DRC-07 dated 16.12.2019 (Annexure-P/2) has been affirmed;

(v) For issuance of appropriate writ including writ of mandamus directing the respondents to withdraw the assessment order/ASMT-13 dated 16.12.2019 (Annexure-P/1) and the demand- DRC-07 dated 16.12.2019 (Annexure-P/2) in view of the fact that while conducting the Annual Assessment for year 2019-20 under section 73 (1), section 61 of the GST Act the returns filed by the petitioner and the GST liability discharged has been found to be in order on the basis of document/evidences submitted by the petitioner and vide order dated 02.08.2022 (Annexure-P/7 Series) accepting the online reply of the petitioner the matter was closed/concluded without raising any further demand for the F.Y – 2019-20;

(vi) For issuing appropriate writ including writ of mandamus directing thereby the respondents to process the refunds for months of July, August, October, October (worth Rs.5,26,560/-, Rs.4,09,546/-, Rs.1,24,544/- and Rs.32,588/-) respectively in FY 2019-20 of the petitioner without adjusting the amount of demand mentioned in DRC 07 dated 16.12.2019 (Annexure-P/2) in view of the fact that annual assessment for FY2019-20 (including

October 2019) has already been closed without pointing out any further liability for the aforesaid period;

(vii) For issuing appropriate directions including the writ of mandamus preventing the respondents from taking any coercive step including attachment of the petitioner until the pendency of the present writ application;

(viii) For issuing appropriate orders for refund of the amount worth Rs 32,588/- deposited by the petitioner while preferring the appeal in view of the fact that the order of presumptive assessment issued under section 62 i.e. ASMT-13 dated 16.12.2019 has lost its efficacy/meaning when detailed/actual assessment has been conducted and concluded and order upon appreciation of evidence and records has been issued for FY 2019-20 under section 61/71 of the GST Act without fixing liability on the petitioner;

(ix) Pass any such other order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

It is brought to our notice that vide impugned order dated 09.09.2021 passed by the Respondent No. 5 namely the Additional Commissioner of State Tax (Appeals), Bhagalpur Division, Bhagalpur, bearing Case no. Memo No.271, the appeal of the petitioner against the order dated 16.12.2019 passed by Respondent No. 7, namely The Assistant Commissioner of State Tax, Bhagalpur Circle, Bhagalpur, under Section 62 of CGST Act, 2017; and summary of order dated 16.12.2019 in Form GST DRC-07, has been rejected ex parte.

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 and the limitation shall not be allowed to come in the way. 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; (c) 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 ex parte in nature.

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 09.09.2021 passed by the Respondent No. 5 namely the Additional Commissioner of State Tax (Appeals), Bhagalpur Division, Bhagalpur, bearing Case no. Memo No.271, the order dated 16.12.2019 passed by Respondent No. 7, namely The Assistant Commissioner of State Tax, Bhagalpur Circle, Bhagalpur, under Section 62 of CGST Act, 2017; and summary of order dated 16.12.2019 in Form 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 02.11.2022 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 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)

K.C.Jha/-DKS

AFR/NAFR	
CAV DATE	
Uploading Date	16.10.2022
Transmission Date	