IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18604 of 2021

==

Ashok Kumar, Son of Anandi Prasad, Resident of Gaushala Area, P.O. New Jute Mills, P.S. Sahayak Thana, Mirchaibari, District- Katihar- 854107.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner, State Tax cum Secretary, Bihar, Department of Commercial Tax, New Secretariat, Patna.
2. The Additional Commissioner State Tax (Appeal), Purnea Division, Purnea.
3. The Assistant Commissioner of State Tax, Katihar Circle, Katihar (Bihar).

... ... Respondent/s

==

Appearance :

For the Petitioner/s : Mr.Ramesh Kumar Agrawal, Advocate
For the Respondent/s : Mr.Vivek Prasad, GP-7

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/Hon'ble Judges through Video Conferencing from their residential offices/residences. Also the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 10-01-2022

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

> "(i) For issuance of an appropriate writes), order (s) or direction(s) in the nature of writ of certiorari quashing the impugned order cum demand notice dated 04.02.2021 (Annexure -1) passed by the respondent Assistant Commissioner of State Tax under Section 73 of the Bihar Goods and Service Tax Act, 2017 (herein after referred to as 'the BGST Act, 2017 only) read with Central Goods and Service Tax Act, 2017 (herein after referred to as 'the CGST Act,

2017 only') for the period 2019-20 by which Rs.43,99,283.98 has been assessed as tax, Rs.8,43,143.10 has been assessed as interest and Rs.4,39,928.40 has been imposed as penalty. Thus, total liability of Rs.56,82,355.48 has been created.

(ii) For issuance of an appropriate writ, order or direction for quashing the appellate order dated 15.07.2021 (Annexure-4) passed by the respondent Appellate Authority that is Additional Commissioner State Tax(Appeal), Purnea Division, Purnea by which appeal filed by the petitioner has been rejected after considering the facts of the other dealer which is violation of principle of natural justice.

(iii) For issuance of an appropriate writ, order or direction for quashing the demand of Rs.l,82,834.00 as CGST and Rs.l,82,834.00 as SGST [Total tax Rs.3,65,668.00], Rs.2,19,964.00 + Rs.2,19,964.00 [total Rs.4,39,928.00] as penalty and Rs.81,116.00 + Rs.81,116.00 [total Rs.l,62,232.00] as interest, Grand total Rs.9,67,828.00 as shown in the Electronic Liability Ledger (Annexure-8) maintained by the GST department of the Government as arbitrary and illegal.

(iv) For issuance of appropriate writ, order or direction restraining the respondents from initiating any recovery proceedings against the petitioner as demanded by the respondents by the aforesaid demand.

(v) For issuance of appropriate writ, order or direction restraining the respondents from taking or initiating any coercive action against the petitioner and or its agents/officials etc, and

(vi) To grant such other consequential relief(s) to the petitioner, which this Hon 'ble Court may find the petitioner to be entitled to in equity and/or in law in the facts and circumstances of the case."

Having heard learned counsel for the parties, we are of the considered view that the order of the appellate authority dated 15.07.2021, Annexure-4, Page 20, needs to be set aside on two counts, (1) the order is cryptic; it does not deal with the issue on fact and law raised by the petitioner in the appeal; it does not assign any reason what-so-ever in dismissing the appeal and in fact, there is no application of mind in the three paragraphs order rejecting the appeal and (2) shockingly the appellate authority intermingled the facts of another assessee in dismissing the appeal. Even while doing so, he did not assign any reasons.

The order entails civil consequences inasmuch as the civil and criminal liability is/can be fastened upon the appellant.

As such, on this short ground alone, we quash and set aside the impugned order dated 15.07.2021,Annexure-4, Page 20,with the following directions:-

(a) Petitioner shall appear before the appellate authority on 25.01.2022, on which date he shall place on record additional materials, which are required to be filed in support of the contention raised in the appeal.

(b) Petitioner through learned counsel undertakes to fully cooperate and not take unnecessary adjournment;

(c) The Appellate Authority shall decide the appeal on merits, in compliance of the principles of natural justice;

(d) The Appellate Authority shall pass a reasoned and speaking order, copy whereof be supplied to the parties;

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

(f) We are hopeful that as and when petitioner takes recourse to such remedies, as are otherwise available in law, before the appropriate forum, the same shall be dealt with, in accordance with law and with reasonable dispatch;

(g) If necessary, proceedings during the time of current Pandemic [Covid-19] would be conducted through digital mode;

(h) Liberty reserved to the petitioner to challenge the order, if so required and desired.

The instant petition sands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, also stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	12.01.2022
Transmission Date	