IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14147 of 2022

==

M/s Narsingh Kumar Yadav (a sole Proprietroship Firm) having it registered office- Khudna, Rupaspur, Rautara, Katihar, Bihar 129, through its sole proprietor Mr. Narsingh Kumar Yadav.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue having its office at Room No. 46, North Block, P.O. and P.S. North Block, New Delhi -110001.
2. The Central Board of Indirect Taxes and Customs, through its Chairman, Ministry of Finance, Department of Revenue, having its office at North Block, P.O. and P.S North Block, New Delhi -110001.
3. The Commissioner of Central Good and Services Tax and Central Excise, Patna having its office at New Secretariat Patna Bihar.
4. Joint Commissioner of State Tax, Circle Katihar, Purnea Bihar.
5. Assistant Commissioner of State Tax, Circle Katihar, Purnea, Bihar.
6. Additional Commissioner (Appeal), Purnea Division, Purnea.
7. Deputy Commissioner, Commercial Taxes, Katihar Circle, Katihar.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Anurag Saurav, Advocate
For the Respondent/s	:	Dr. K.N. Singh, ASG
		Mr. Anshuman Singh, Sr. SC CGST & CX
		Mr. Vivek Prasad, GP-7

==

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 issuance of appropriate writ/order/direction for setting aside order bearing Memo no. 653 dated 17.08.2021 passed by Additional Commissioner (Appeal), Purnea Division, Purnea in Appeal Case for the financial year 2019-20 whereby and where under the Appellate Authority upheld the order dated 16.01.2021 passed by Respondent no.5 and dismissed the Appeal on the ground of non filing of certified copy of impugned order.

(ii) For Issuance of an appropriate writ/ order/ direction for setting aside order bearing reference no. ZD100121014711H dated 16.01.2021 passed by respondent no.5 i.e Assistant Commissioner of State Tax jurisdiction, Katihar Circle, Purnea, Bihar, whereby and where under respondent under tax (along with interest and penalty) amounting Rs. 37,54,167.52/- has been imposed by the respondent under section 74(9) of BGST Act read with Rule 142 of BGST Rules, 2017 and the said proceeding has been initiated by the respondent authorities on the ground that a deduction of TDS in the name of petitioner were reflecting in GSTR-7 of Tax Deductor namely Executive Engineer, REO Works Division, Katihar, RWD Work Division, Katihar and Rural Works Department and the same has not been disclosed by the petitioner in their return.

(iii) For setting aside order dated 16.01.2021 passed by Deputy Commissioner, Commercial Tax, Katihar Circle, Katihar under tax (along with interest and penalty) amounting Rs. 37,54,167.52/- has been imposed by the respondent under section 74 of BGST Act read with Rule 142 of BGST Rules, 2017 and the said proceeding has been initiated by the respondent authorities on the ground that a deduction of TDS in the name of petitioner were reflecting in GSTR-7 of some deductor and the same has not been disclosed by the petitioner in their return and a direction was issued to raised demand in the Form of GST DRC 07.

(iv) For setting aside the demand notice issued in the Form of DRC 07 Dated:16.01.2021.

(v) For Setting aside Process bearing Process No. 44 dated: 04.02.2022 issued by Respondent No.5 Whereby and Where under a demand has been made from Regional Manager/Branch Manager of Bank for deposit of a Sum of Rs.25,83,858/-. And further attached the Bank Account of the petitioner.

(vi) For Setting aside Process bearing Process No.45 dated: 04.01.2022 issued by Respondent No.5 to Executive Engineer, RWD Works Division, Katihar Whereby and Where under it has been directed to hold the amount of petitioner for issuance of DRC 13 for recovery of tax amount through the Bank account attachment.

(vii) For Setting aside order for cancellation of Registration dated 17.10.2019 passed by Respondent No.4 on the ground that the petitioner has not filed Return for last six months.

(viii) For restraining the respondent authority for issuance of DRC 13 for recovery of tax amount through the Bank account attachment.

(ix) For Issuance of writ in the nature of Mandamus directing the respondent authority to restore the Registration of the petitioner.

(x) For issuance of an appropriate Writ(s), order(S), and/or direction(s), as Your Lordships may deem fit and proper in the facts and circumstances of this case in the interest of justice.

It is brought to our notice that vide impugned order dated 17.08.2021 passed by the Respondent No. 6 namely Additional Commissioner (Appeal), Purnea Division, Purnea in Appeal Case No. ARN AD100321004409**,** the appeal of the petitioner against the order dated 16.01.2021 passed by the Respondent No. 5 namely Assistant Commissioner of State Tax, Circle Katihar, Purnea, Bihar and the summary of order dated 16.01.2021 issued in form GST DRC-07, has been rejected. The orders appear to be *ex parte* in nature. The petitioner has also prayed for quashing of orders dated 04.02.2022 and 04.01.2022, passed by respondent No.5, namely, Assistant Commissioner of

State Tax, Circle Katihar, Purnea, Bihar and order dated 17.10.2019 passed by respondent No.4, namely, Joint Commissioner of State Tax, Circle Katihar, Purnea, Bihar.

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 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 17.08.2021 passed by the Respondent No. 6 namely Additional Commissioner (Appeal), Purnea Division, Purnea in Appeal Case No. ARN AD100321004409**,** order dated 16.01.2021 passed by the Respondent No. 5 namely Assistant Commissioner of State Tax, Circle Katihar, Purnea, Bihar, the summary of order dated 16.01.2021 issued in form GST DRC-07, orders dated 04.02.2022 and 04.01.2022, passed by respondent No.5, namely, Assistant Commissioner of State Tax, Circle Katihar, Purnea, Bihar and order dated 17.10.2019 passed by respondent No.4, namely, Joint Commissioner of State Tax, Circle Katihar, Purnea, Bihar;

(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;

(r) If possible, 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)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	15.10.2022
Transmission Date	