IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14363 of 2022

M/s. Shiv Coal Trading through its Proprietor Mukesh Kumar Pankaj @ Mukesh Kumar Singh, aged about 50 years (Male, Son of Siyaram Singh, Resident of Devichak, Back of Achayra Surdarshan School, P.O. and P.S.- Fatwah, District- Patna, Bihar- 803201.

... ... 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), Saran Division, Chapra, Bihar.
6. The Joint Commissioner of State Tax, Saran Circle, Chapra Bihar Office of the Joint Commissioner of State Tax, Saran Circle, Chapra.
7. The Assistant Commissioner of State Tax, Saran Circle, Chapra, Bihar Office of the Joint Commissioner of State Tax, Saran Circle, Chapra.
8. The Federal Bank B/146, Kankarbagh Housing Colony Branch, Patna.

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr.Vijay Kumar Singh, Advocate
Mr. Brisketu Sharan Pandey, Advocate
Mr. Abhishek Kumar, Advocate

For the Respondent/s : Dr. K.N.Singh, A.S.G.
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 following relief:-

> "(i). For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the Assessment Order dated 24.12.2019 (Annexure-P/1) passed under Section 73 of the CGST Act, 2017 for the 1st Quarter of F.Y-2019-20 i.e. April 2019 to June 2019 whereby assessment of the period i.e. April 2019 to June 2019 has been done and amount worth Rs. 11,36,046.52 (with break-up of Rs. 1,59,713.45 as CGST, Rs. 1,59,713.45 as SGST with interest of Rs. 12,457.65 on said CGST liability and interest of Rs. 12,457.65 on SGST liability; as also assessed worth Rs. 7,34,419.59 and interest worth Rs. 57,284.73 on the above Cess) has been assessed as liability for the said 1st quarter of 2019-20;
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> (ii) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the demand issued in Form DRC-07 dated

24.12.2019 (Annexure-P/2) issued in furtherance of assessment order dated 24.12.2019 (Annexure-P/1) whereby and whereunder on the basis of said assessment of the period i.e. April to June 2019 a demand worth Rs. 11,36,046.52 (with break-up of Rs. 1,59,713.45 as CGST, Rs. 1,59,713.45 as SGST with interest of Rs. 12,457.65 on said CGST liability and interest of Rs. 12,457.45 on SGST liability; as also assessed worth Rs. 7,34,419.59 and interest worth Rs. 57,284.73 on the above Cess) for the said 1st quarter of 2019-20 has been issued/raised against the petitioner.

(iii) For issuing appropriate writ including writ of certiorari or any other appropriate writ for quashing/setting aside the Appellate Order dated 24.02.2021 bearing Case No. SR/GST-01/2019-20 Memo No. 24 passed by Respondent No. 5 for 1st quarter of 2019-20 (Annexure-P/2) whereby and whereunder the appeal filed by the petitioner assailing the assessment order dated 24.12.2019 (Annexure-P/1) as also demand DRC-07 dated 24.12.2019 (Annexure-P/2) 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 summary of demand issued in Form GST APL-04 dated 02.03.2021 (Annexure-P/8) issued in furtherance of Appellate Order dated 24.02.2021 (Annexure-P/7) for the 1st Quarter of F.Y-2019-20, whereby and whereunder the demand worth Rs. 11,36,046.52 rounded off to 11,36,047/- (with break-up of Rs. 1,59,713/- as CGST, Rs. 1,59,713/- as SGST with interest of Rs. 12,458/- on said CGST liability and interest of Rs. 12,458/- on SGST liability; as also assessed worth Rs. 7,34,420/- and interest worth Rs. 57, 285/- on the above cess) as raised by the assessment order dated 24.12.2019 (Annexure-P/1) and DRC-07 dated 24.12.2019 (Annexure-P/2) has been affirmed;

(v) For issuing appropriate writ including writ of certiorari and thereby quashing the recovery letter dated 17.02.2021 (Annexure-P/9) issued in Form of GST DRC-13 to the Banker (Federal Bank, B/146 Kankarbagh Housing Colony, Patna) has been directed to recover and pay a sum of Rs. 10,30,661/- from the Bank Account of the petitioner.

(vi) For holding that the Ld. Assessing

Officer as also the appellate authority has fallen into grave error by deliberately deviating from the prescribed assessment procedure as per which the petitioner is to be issued summary order notice under Section 73 intimating the petitioner for payment withing 30 days from the issuance of such summary demand notice.

(vii) For issuing appropriate writ including writ of mandamus directing thereby the Respondent Banker as also the Respondents No. 6 & 7 for allowing the regular operation of Bank Account (which has been freezed in furtherance of order dated 17.02.2022) of the petitioner as consequence of stay/quashing of DRC-13 dated 17.02.2022 of the petitioner as consequence of stay/quashing of DRC-13 dated 17.02.2022 (Annexure-P/9).

(viii) For issuance of appropriate writ including writ of mandamus directing the respondents to withdraw the assessment order, the demand- DRC-07 dated 24.12.2019 (Annexure-P/2) in view of the fact that the petitioner has already paid the tax liability by filing tax return – GSTR-1/3B for the said period (1st Quarter F.Y-2019-20) wherein the tax liability pointed out by the Ld. Assessing Officer has discharged by filing amended return subsequently;

(ix) For issuing appropriate orders for refund of the amount worth Rs. 1,05,386/- deposited by the petitioner while preferring the appeal in view of the fact that the petitioner has already filed the amended return and thereby has deposited the liability assessed by Respondent No. 7;

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

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

It is brought to our notice that vide impugned order dated 24.02.2021 passed by the Respondent No. 5 namely Additional Commissioner of State Taxes (Appeal), Saran Division, Chapra, Bihar in Appeal Case No. SR/GST-01/2019-20, the appeal of the petitioner against the order dated 24.12.2019 passed by the Respondent No. 7 namely Assistant Commissioner of State Tax, Saran Circle, Chapra in GSTIN-10AQSPP3763F1ZQ (Annexure-P/1) and the summary of order dated 24.12.2019 issued in form GST DRC-07(Annexure-P/2), has been rejected.

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 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, 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 24.02.2021 passed by the Respondent No. 5 namely Additional Commissioner of State Taxes (Appeal), Saran Division, Chapra, Bihar in Appeal Case No. SR/GST-01/2019-20; order dated 24.12.2019 passed by the Respondent No. 7 namely Assistant Commissioner of State Tax, Saran Circle, Chapra in GSTIN-10AQSPP3763F1ZQ (Annexure-P/1) and summary of order dated 24.12.2019 issued in form GST DRC-07(Annexure-P/2);

(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)

sujit/-

AFR/NAFR	
CAV DATE	
Uploading Date	20.11.2022
Transmission Date	