IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14971 of 2022

==

M/s Shree Sai Traders (a Sole Proprietorship Firm) having its registered office - at Postal Park Road No. 4 Indira Nagar, Patna, through its sole proprietor Mrs. Anju Lal.

... ... 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 Commissioner of Central Goods and Services Tax and Central Excise, Patna having its office at New Secretariat, Patna, Bihar.
3. Joint Commissioner of State Tax, North Circle, Patna East, Bihar
4. Assistant Commissioner of State Tax, North Circle, Patna East, Bihar.
5. Additional Commissioner (Appeal), Patna East Division, Pant Bhawan, Bailey Road, Patna

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Anurag Saurav, Advocate
For the Respondent/s	:	Mr. Anshuman Singh, Sr. SC, CGST & CX
For the State	:	Mr. Vikash Kumar, SC-11

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-11-2022

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. 301 dated 19.09.2022 passed by Additional Commissioner (Appeal), Patna East Division, Patna in Appeal Case bearing ARN No. AD100822003603S for the financial year 2019-20

(period October 2019 to March 2020) whereby and where under the Appellate Authority upheld the order dated 09.01.2021 passed by Respondent No. 4 and dismissed the Appeal on the ground of delay of filing of Appeal i.e. beyond the period of 90 days and said Appeal was dismissed underground of Limitation.

(ii) For issuance of an appropriate writ/ order/ direction for setting aside Ex-parte order bearing reference No. ZD1001210069519 dated 09.01.2021 passed by respondent No. 4 i.e. Assistant Commissioner of State Tax jurisdiction, North Circle, Patna, Bihar, whereby and where under respondent under tax (along with interest and penalty) amounting to Rs. 1,55,762/- has been imposed by the respondent under Section 73(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 and petitioner has made a lesser entry of Rs. 11,31,352/- in their return, whereas the Tax Deductor had made a double entry of the same amount in their return which was established by the petitioner through other evidences but the same was not considered by Assessing Officer.

(iii) For setting aside order dated 09.01.2021 passed by respondent No. 4 and an amount of Rs. 1,55,762/- has been imposed by the respondent under Section 73(9) of BGST Act read with Rule 142 of the BGST Rules, 2017 and the said proceeding has been initiated by the respondent authorities on the ground that an excess deduction of TDS in the name of petitioner were reflecting in GSTR-7 of Tax 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:09.01.2021

(v) For releasing the bank account of the petitioner attached by the respondent authority during the proceeding.

(vi) For issuance of an appropriate Writ(s), order(S) and/or direction(s), as Your Lorships 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 19.09.2022 (Annexure-5) passed by the Respondent No. 5, namely, Additional Commissioner (Appeal), Patna East Division, Patna in ARN No. AD100822003603S for the financial year 2019-20, the appeal of the petitioner against the order dated 09.01.2021(Annexure-2) passed by the Respondent No. 4, namely, the Assistant Commissioner of State Taxes, North Circle Patna East, Bihar, in GSTIN No. 10ABNPL6933H1ZO as also summary of the order dated 09.01.2021, has been rejected affirming the order of the Assessing Authority. The orders were *ex parte* in nature.

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 19.09.2022 (Annexure-5) passed by the Respondent No. 5, namely, Additional Commissioner (Appeal), Patna East Division, Patna in ARN No. AD100822003603S for the financial year 2019-20, the appeal of the petitioner against the order dated 09.01.2021(Annexure-2) passed by the Respondent No. 4, namely, the Assistant Commissioner of State Taxes, North Circle Patna East, Bihar, in GSTIN No. 10ABNPL6933H1ZO as also summary of the order dated 09.01.2021;

(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 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 30.11. 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) Since the petitioner has been pursuing the remedies before this Court, the issue of limitation shall not come in the of the Assessing Authority in deciding the matter on merits;

(k) The Assessing Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(l) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(m) 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;

(n) The Assessing Authority shall pass a speaking order, assigning reasons, copy whereof shall be supplied to the parties;

(o) Liberty reserved to the petitioner to challenge the order, if required and desired;

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

(q) 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;

(r) We have not expressed any opinion on merits and all issues are left open;

(s) 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)

(Partha Sarthy, J)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	14.11.2022
Transmission Date	