IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14671 of 2022

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M/s Pankaj Kumar Mishra an individual firm having its place of business at Teghra, Haveli Kharagpur, Munger, Bihar- 811213 through its proprietor namely Pankaj Kumar Mishra male aged about 52 years, son of Dinesh Chandra Mishra, resident of Gram Teghra, P.O.- Teghra, Thana- Haveli, Kharagpur, District- Munger, Bihar- 811213.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeals), Bhagalpur Division, Bhagalpur.
3. The Assistant Commissioner of State Taxes, Munger Circle, Munger. (January- 2019)

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
For the Respondent/s : Mr.Vikash Kumar (Sc11)

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

Date : 02-11-2022

Petitioner has prayed for following relief(s):-

"a) For issuance of a writ in the nature of certiorari for quashing of the appellate order dated 14.03.2021 issued vide memo number 106 Bhagalpur issued by the respondent number 2 whereby the appeal preferred by the petitioner against the order imposing liability of tax, interest and penalty under section 74 of the Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as the Bihar 2017 for short) has been rejected on grounds of delay and bar of limitation;

b) For further issuance of a writ in the nature of certiorari for quashing of the order dated 04.10.2021 issued vide memo number 294 Bhagalpur by the respondent number 2 whereby the request made by the petitioner for rectification of the impugned appellate order dated 14.03.2021 has been rejected on erroneous grounds;

c) For further issuance of writ in the nature of certiorari for quashing of the ex-parte order dated 03.03.2020 and the summary of order issued in form GST DRC-07 dated 05.03.2020 passed and issued by the respondent number 3 whereby liability of tax, interest and penalty has been imposed in exercise of powers under section 74 of the Bihar 2017;

d) For further holding and a declaration that once the petitioner has admitted the liability of tax and discharged the same against payments received from the concerned employer in the month of January 2019 by way of return filed for the month of March 2019, there is no question of any liability of tax due and therefore the whole proceeding initiated under section 74 of the Bihar act 2017 is non-est and wholly without jurisdiction as no tax component remained due to be paid;

e) For issuance of a writ or order or direction restraining the respondents from taking any coercive action against the petitioner for recovery of the amount of tax, interest and penalty in terms of the impugned order;

f) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case."

It is brought to our notice that vide impugned order dated 14.03.2021 issued vide Memo. No. 106, Bhagalpur, passed by the Respondent No. 2 namely the The Additional Commissioner of State Taxes (Appeals), Bhagalpur Division, Bhagalpur, in Appeal Case No. M.G.G.S.T. 44/20-21, the appeal of the petitioner against the ex parte order dated 03.03.2020 and summary of order dated 05.03.2020 passed by Respondent No. 3, namely The Assistant Commissioner of State Taxes, Munger Circle, Munger, under Section 74 of BGST Act, 2017; in Form GST DRC-07, has been rejected on the ground of the same being barred by limitation. Petitioner's request for rectification of the appellate order dated 14.03.2021 also stands rejected vide order dated 04.10.2021 issued under Memo. No. 294, Bhagalpur.

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 14.03.2021 issued vide Memo. No. 106, Bhagalpur, passed by the Respondent No. 2 namely the The Additional Commissioner of State Taxes (Appeals), Bhagalpur Division, Bhagalpur, in Appeal Case No. M.G.G.S.T. 44/20-21, the ex parte order dated 03.03.2020 and summary of order dated 05.03.2020 passed by Respondent No. 3, namely The Assistant Commissioner of State Taxes, Munger Circle, Munger, under Section 74 of BGST Act, 2017; in Form GST DRC-07, as also the order dated 04.10.2021 issued under Memo. No. 294, Bhagalpur;

(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 30th of November, 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)

(Partha Sarthy, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	04.11.2022
Transmission Date	