IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17132 of 2022

Pamm Advertising and Marketing Office at - Ground Floor, Saraswati Niketan, IAS Colony, Kidwaipuri, Patna Bihar - 800001 through its proprietor Sri Sunil Chabra, aged about 62 years, son of Late Sh. Roshan Lal Chhabra, resident of D- 4/20 DLF- 1, Gurugram Haryana - 122002, P.S. - Gurugram, District - Haryana.

... ... Petitioner/s

Versus

1. The Union of India through the Principal Chief Commissioner of Central Tax, Government of India, New Delhi.
2. The Principal Commissioner of Central Tax, Government of India, New Delhi.
3. The Commissioner Central Tax, Government of India, New Delhi.
4. The State of Bihar through the Principal Chief Commissioner, State Tax, Bihar, Patna.
5. The Chief Commissioner, State Tax, Bihar, Patna.
6. The Additional Commissioner (Appeal) State Taxes, Patna East Circle, Patna.
7. The Additional Commissioner of State Tax, Patna Central Circle, Patna West, Patna.
8. The Deputy Commissioner Patna Central Circle, Patna.
9. The Assistant Commissioner, Patna Central Circle, Patna.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Ajay Kumar Tiwary, Advocate
For the Respondent/s	:	Dr. K.N. Singh (ASG)
		Mr. Anshuman Singh, Sr. SC, CGST & CX

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

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 : 16-12-2022

Petitioner has prayed for following relief (s) : -

> "i. For setting aside the order dated 05.03.2020, passed by the Assistant Commissioner of State Taxes, Patna Central Circle, Patna, whereby the tax, interest and penalty of Rs. 12,93,772/- has been imposed in exercise of jurisdiction u/s 74 of the Bihar Goods and Services Tax Act, 2017 with respect to period April, 2019 to October, 2019.
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> ii. The petitioner further prays for setting aside the DRC 07 dated 05.03.2020 for the period April, 2019 to October, 2019 for Rs. 12,93,772/-
>
> iii. The petitioner further prays for setting aside the appellate order dated 10.02.2021, passed by the Additional Commissioner (Appeal) State Taxes, Patna East Circle, Patna whereby appeal filed by the petitioner has been dismissed **without considering the points taken by the petitioner in gross violation of principal of natural justice as has been observed in the Judgement reported in 2010(9) SCC 496 (Kranti Associates(P) Ltd Versus Masood Ahmad- Paragraph no. 47, which was also followed in 2019 (15) SCC 1 (Naresh Bhai Bhagu Bhai Versus The Union of India) Paragraph no. 24 and 25.**
>
> iv. For any other relief for which the petitioner may be deemed entitled to."

It is brought to our notice that vide impugned order dated 10.02.2021 passed by the Respondent No. 6 namely the Additional Commissioner (Appeal) State Taxes, Patna East Circle, Patna, the appeal of the petitioner against the order dated 05.03.2020 passed by Respondent No. 9, namely The Assistant Commissioner of State Taxes, Patna Central Circle, Patna under Section 74 of BGST Act, 2017; and summary of order dated 05.03.2020 in Form GST DRC-07 for the period April, 2019 to October, 2019, has been rejected without considering the points taken by the petitioner in gross violation of principles of natural justice.

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 10.02.2021 passed by the Respondent No. 6 namely the Additional Commissioner (Appeal) State Taxes, Patna East Circle, Patna, the order dated 05.03.2020 passed by Respondent No. 9, namely The Assistant Commissioner of State Taxes, Patna Central Circle, Patna under Section 74 of BGST Act, 2017; and summary of order dated 05.03.2020 in Form GST DRC-07;

(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 04.01.2023 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)

(Partha Sarthy, J)

KC Jha/chn

AFR/NAFR	
CAV DATE	
Uploading Date	20.12.2022
Transmission Date	