IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16372 of 2022

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Simanchal Detective and Security Services Private Limited, a Company registered with the Registrar of Companies, having its registeted Office at 405, Shiv Laxmi Plaza, Main Road, Kankerbagh, Patna, Bihar-800020 through its authorized Signatory namely Rita Sharma (Female), aged about 52 Years, Wife of Manoj Kumar resident of Shiv Nath Bhawan, West of Rajendra Nagar Over Bridge, Police Station-Patrakar Nagar, District-Patna (Bihar).

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Department of State Tax, Government of Bihar, Patna.
2. The Additional Commissioner of State Tax (Appeals) Patna West Division, Patna.
3. The Assistant Commissioner of State Tax, Shahabad, Patna Special, Central, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajeev Shekhar, Advocate Mr. Sanjeev Kumar, Advocate Mr. Pravashankar Mishra, Advocate
For the Respondent/s	:	Mr. Vivek Prasad, GP-7

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

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

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(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.)

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Date : 02-12-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

i) To issue a Writ in nature of Certiorari for quashing ex-parte appellate's order dated 07.10.2022 issued vide Memo no.636 under the signature of the respondent no.2 in Appeal Case No.AD10082200088IN/2020-21 whereby the appeal preferred by the petitioner against the order dated 26.12.2021 passed by respondent no.3 under Section 34 of the Bihar Goods and Service Tax Act, 2017 and the summary of order issued form GST DRC-07 dated 26.12.2021 has been rejected.

ii) To issue a Writ in the nature of Certiorari for quashing the order dated 26.12.2021 passed and summary of the order in the Form of GST DRC-07 dated 26.12.2019 issued by respondent no.3 whereby the liability of tax, penalty and interest has been imposed under Section 74 of the Bihar Goods and Service Tax Act, 2017 for the tax period April 2020 to March 2021.

iii) For further restraining the respondents from making recovery of the amount of tax, interest and penalty imposed and raised in terms of impugned order dated 26.12.2021 passed by respondent no.3.

iv) To any other relief or reliefs to which the petitioner company is entitled in the facts and circumstances of the case.

It is brought to our notice that vide impugned order dated 07.10.2022 passed by Respondent No.2, namely, the Additional Commissioner of State Tax (Appeals), Patna West

Division, Patna, in Appeal Case No. AD10082200088IN (Annexure-6); order in Form GST APL-02 dated 10.10.2022 in Reference No. ZD1010220033886 (Annexure-7), the appeal of the petitioner against the order dated 26.12.2021 passed by Respondent No. 3, namely, the Assistant Commissioner of State Tax, Shahabad, Patna Special, Central, Bihar, Patna in Reference No. ZD101221015667Y (Annexure-3) and the Summary of the order in Form GST DRC-07 dated 26.12.2021 (Annexure-4) has been rejected merely on the grounds of being barred by limitation. Both the orders were *ex parte* in nature.

In our considered view, the delay stands sufficiently explained on account of COVID-19 restrictions.

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. 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 reasons sufficient 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. 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 to be *ex parte* in nature.

As such, we dispose of the present writ petition in the following mutually agreeable terms:

(a) We quash and set aside the impugned order dated 07.10.2022 passed by Respondent No.2, namely, the Additional Commissioner of State Tax (Appeals), Patna West Division, Patna, in Appeal Case No. AD10082200088IN (Annexure-6); order in Form GST APL-02 dated 10.10.2022 in Reference No. ZD1010220033886 (Annexure-7); order dated

26.12.2021 passed by Respondent No. 3, namely, the Assistant Commissioner of State Tax, Shahabad, Patna Special, Central, Bihar, Patna in Reference No. ZD101221015667Y (Annexure-3) and the Summary of the order in Form GST DRC-07 dated 26.12.2021 (Annexure-4);

(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 contentions 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 26th of December, 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. Also, opportunity to place on record all essential documents and materials, if so required and desired, shall be granted;

(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 stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, shall stand 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)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	06.12.2022
Transmission Date	