IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.372 of 2023

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M/s. Silica Infotech Private Limited A Private Limited Company, incorporated under the provision of Companies Act, having its Registered Office at Bank Road, 101, Nisha Apartment, Gandhi Maidan, P.S.- Gandhi Maidan, Town and District- Patna, through its Director Mr. Prakash Singh Bisht, Son of Sri Mathura Singh Bisht, Aged about 45 year (Male) Resident of R.Z.- 49 A Somesh Bihar, Post- Chhawla, P.S.- Chhawla, SO, District- South West Delhi, Delhi- 110071.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Commissioner, Department of State Taxes, Government of Bihar, Patna.
3. The Additional Commissioner of State Taxes (Appeal), Patna West Division, Patna.
4. The Assistant Commissioner of State Taxes, Gandhi Maidan Circled, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Manoj Kumar Keshri, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (SC-11)

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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 : 20-01-2023

Heard learned counsel for the parties.

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

(i) For quashing the Appellate Orders bearing Memo No. 294, Memo NO. 292 and Memo No. 293 all dated 28.02.2020 for the period April 2019, May, 2019 and

June, 2019 respectively with respect to Financial Year 2019-20 passed by the Additional Commissioner (Appeal), State Tax, Patna West Division, Patna whereby the Appeals were dismissed on the ground of delay and without hearing the same on its merit and in violation of principles of natural justice;

(ii) For quashing of the Assessment Orders under Section 62 of Bihar Goods & Service Tax Act, 2017 (hereinafter referred to as the BGST) bearing Ref. No.374 dt. 02.07.2019, Ref. No. 644 dt. 24.07.2019 and Ref.No. 802 dt. 07.08.2019 for the Financial Year 2019-20 passed by the Respondent Assistant Commissioner of State Taxes, Gandhi Maidan Circle, Patna whereby the impugned Assessment Orders were passed for non filing of GSTR-3B Returns for the month of April, 2019 to June, 2019 for the Financial Year 2019-20 being in violation of principles of natural justice as the same was passed without service of the Show Cause Notice or affording any opportunity of hearing to the Petitioner;

(iii) For directing the Respondent to accept the belated Returns in GSTR-3B which has already been filed after payment of late fee on 09.09.2019 and 26.09.2019 respectively ;

(iv) For restraining the Respondents to recover the impugned demand during the pendency of the present writ petition including by attaching the bank account of the Petitioner and to grant such other relief(s) to which the Petitioner is entitled in the facts and circumstances of the case.

It is brought to our notice that vide impugned orders dated 28.02.2020 passed by the Respondent No. 3 namely the Additional Commissioner of State Taxes (Appeal), Patna West Division, Patna, in Appeal No. ARN AD100220015919L and in Appeal No.ARN AD100220015955P, the appeals of the petitioner against the orders dated 02.07.2019 and 07.08.2019 repectively passed by Respondent No. 4, namely The Assistant Commissioner of State Taxes, Gandhi Maidan Circle, Patna, have been rejected on the ground of the same being barred by limitation.

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 orders dated 28.02.2020 passed by the Respondent No. 3 namely the Additional Commissioner of State Taxes (Appeal), Patna West Division, Patna, in Appeal No. ARN AD100220015919L and in Appeal No.ARN AD100220015955P, and the orders dated 02.07.2019 and 07.08.2019 repectively passed by Respondent No. 4, namely The Assistant Commissioner of State Taxes, Gandhi Maidan Circle, Patna;

(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 06.02.2023 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)

Rajiv/-K.C. Jha

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	