IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3769 of 2023

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Suraj Shoe House through proprietor Suraj Kumar, (M) aged- 26 years, Son of Late Satyendra Prasad, resident of Old Jakkanpur, Manjusha Gali, south of D.V.C. Boundary, Ramrati Niwas, P.S.- Jakkanpur, Patna- 800001.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance (Department of Revenue), Government of India, New Delhi.
2. The Under Secretary, Ministry of Finance (Department of Revenue), Government of India, New Delhi.
3. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
4. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
5. The Principal Commissioner, Central Goods and Service Tax, third Floor, Central Revenue Building, Bir Chand Patel Path, Patna, Bihar.
6. The Joint Commissioner State Tax (J.C.S.T.), Patna.
7. The Assistant Commissioner State Tax, Patna South Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Amiya Kunal, Advocate
For the U.O.I	:	Dr. K.N. Singh, ASG
		Mr. Anshuman Singh, Sr. SC, CGST & CX
For the State	:	Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-04-2023

The petitioner claims to be running a small time business selling footwears, who was visited with a huge demand allegedly due to a return filed in the portal of the petitioner by some third party who hacked into the same. The learned counsel for the petitioner vigorously argues for the position that a complaint of hacking has been registered with the department, which has not been inquired into. It is alleged that the petitioner is the victim of fraud and that he has to cross-examine the alleged sellers in order to carry out a detailed investigation and inquiry into the complaint of hacking which is an act of fraud committed on the petitioner.

2. The petitioner in the writ petition, under Article 226 of the Constitution of India, challenged the orders dated 14.09.2022, 25.11.2022, 29.11.2022 and 27.09.2022, which are respectively produced as Annexure-7 and Annexure-9 to Annexure-11.

3. Annexure-7 is just a notice requiring show-cause as to why a demand shall not be raised for tax under the IGST coming to Rs. 6,48,86,945/- with interest at the rate of 15% and an equal penalty as also a further demand on account of sales suppression of both CGST and SGST each of Rs. 7740.225 with interest thereon and equal penalty.

4. Annexure-9 refers to Annexure-7 show-cause notice and imposes a penalty under Section 122 of the Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as the 'Act') on the ground of non-issuance of tax invoices and non-maintenance of a register of sale in accordance with Section 31

of the Act. Rs. 10,000/- each was imposed as penalty under the CGST and SGST enactments. Annexure-10 is the consequential demand arising from Annexure-9, of the total penalty of Rs. 20,000/- imposed under the two enactments. Annexure-10 at page-87 is the order pursuant to the notice issued under Annexure-9 imposing tax and penalty under the said notice, both under the heads of IGST, CSGT and SGST.

5. Annexure-11 is the demand pursuant to the order at Annexure-10 dated 29.11.2022. The orders issued by the Assessing Officer under the various enactments, are those dated 25.11.2022 and 29.11.2022. Obviously, the petitioner had an appellate remedy under Section 107 of the BGST Act, which was not availed of. Section 107(4) prescribes the limitation period for filing of an appeal to be three months and also provides a further period of one month in which an appeal could be filed with an application for delay condonation, which condonation could be considered by the Appellate Authority and the appeal allowed to be maintained on satisfaction of the reasons stated for delay.

6. It is trite that when the statute provides for a period of limitation and also a specific period for the purpose of delay condonation, then Section 5 of the Limitation Act does not

apply and any appeal filed beyond the period, provided for maintaining an appeal with delay, cannot be entertained.

7. The remedy under Article 226 of the Constitution of India cannot be availed to get over the statutory provisions and hence, the present petition, under Article 226 of the Constitution of India, against the orders of assessment and penalty is not maintainable.

8. In the context of the allegation of fraud raised by the petitioner, we have also looked at the facts coming out from the orders. In fact, the show-cause notice was issued based on an inspection carried out at the premises on 08.06.2022, the inspection report of which is produced at Annexure-2. It was when the inspection was carried out, the petitioner raised a complaint of hacking as is seen from Annexure-1. It was his specific contention that he has filed the GST return till December, 2021 and after that his GST Id and password was hacked by an unknown person and the mobile number and mail Id were also changed. It was also alleged that the said hacker had filed GST return for the period January, 2022 to March 2022, disclosing a total invoice value of more than Rs. 40 crores and taxable value of more than Rs. 36 crores out of total of 459 invoices. The petitioner claimed that since he was filing returns

quarterly, he was made aware of the same only after his GST Id and password were reset by the department.

9. It is very pertinent to notice here that even quarterly returns had to be filed before 08.06.2022 and there was nothing produced to show that he had made a complaint to the department, either of the hacking or for restoration of his Id or password, prior to the inspection conducted. It is also to be specifically noticed that when the inspection was conducted, the assessee, who was present in the business premises, as is evident from the inspection report at Annexure-2; failed to produce the stock register and the purchase register. In this context, it is also relevant to notice that though in the writ petition, he claims that he was not afforded cross-examination of the sellers, he has not made any such claim before the Assessing Authority when notices and subsequent reminders were issued to him before the orders of assessment and penalty were concluded. Even in the writ petition, the persons, whom the assessee intends to cross-examine, are not named and allegation is raised of fraud and requirement of cross-examination without any substantiation of the facts leading to the alleged fraud or even a complaint having been raised before the date of inspection.

10. Be that as it may, we have looked at the specific

allegation insofar as the declaration of a total taxable value as per GSTR-1 return filed for the financial year 2021-22 wherein a total taxable value of Rs. 36,04,93,880.44 was declared against which IGST of Rs. 6,48,88,898.48 was involved. In fact, the assessee had filed GSTR-1 return as against March-2021 in which the very same taxable value was declared and GST was claimed to have been paid.

11. It was found by the Department that in the GSTR-1 return against March-2021, the assesse declared a total taxable value of Rs. 36,04,93,880.44 against which IGST of Rs. 6,48,88,898.48 was claimed under the IGST; while in the financial year 2021-22, as per GSTR-2B, the tax paid under the IGST head was only Rs.3,528.96. The total inter-state sale was astronomical compared to the inter-state purchases made by the assessee coupled with the fact that no stock and purchase register was produced at the time of inspection. This has led to the assessment of IGST and it was on sale suppression that the CGST and SGST was claimed, the latter of which is a minimal amount. The petitioner admitted to have not issued any sale invoices to his purchasers since he was running a small business; which is not statutorily permissible.

12. We find no reason to uphold the allegation of

fraud, which is only an accusation raised at the time of inspection when the assessee could not produce any substantiating registers to support the huge value of transactions resulting in bogus claims of input tax credit by the suppliers of the petitioner. The petitioner by his own returns had shown huge sales to four businessmen, where input tax was claimed on the basis of the bogus returns of inter-state purchase.

13. We find no reason to entertain the writ petition for the reason of bypassing the appellate remedy and also for reason of the allegations of fraud having been unsubstantiated; which we also find to be an afterthought pursuant to the inspection carried out in the business premises of the assessee.

14. The writ petition stands dismissed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

aditya/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	02.05.2023.
Transmission Date	N/A