IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17851 of 2022

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M/s Dharamraj Motors Salkhua Bazar, Saharsa through its Proprietor Priyanka Kumari, Female, Aged about 36 Years, W/o Uma Kant Kumar, R/o-Ward No. -11 Kopariya, Saharsa, Bihar.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary Department of Revenue, Ministry of Finance, North Block, New Delhi.
2. The Secretary Department of Revenue, Ministry of Finance, North Block, New Delhi.
3. The State of Bihar through the Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
4. The Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
5. The Additional Commissioner State Tax (Appeals), Purnia Division, Purnia, Bihar.
6. The Joint Commissioner of State Tax, Saharsa, Circle, Saharsa, Bihar.
7. The Assistant Commissioner of State Tax, Saharsa Circle, Saharsa, Bihar.
8. The District Certificate Officer, Saharsa, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gyan Shankar, Advocate
For the Respondent/s : Dr. K.N. Singh, ASG
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)

Date : 25-01-2023

Heard learned counsel for the parties.

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

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(i) For issuing a writ of certiorari or any other appropriate writ quashing/ setting aside the assessment order dated 08.02.2021 and summery order dated 08.02.2021 passed by Respondent No. 7 for the F.Y 2019-20 whereby and whereunder the *ex parte* assessment order has been passed for the aforesaid period and thereby a total liability of Rs.33,29,122/- (with breakup as - (a) CGST worth Rs.13,444,67/- with interest Rs.1,85,647/- and penalty Rs. 1,34,447/-thereupon; and (b) SGST Rs.13,444,67/- with interest Rs.1,85,647/- and penalty Rs. 1,34,447/-thereupon, has been imposed on the petitioner;

(ii) For issuing a writ of certiorari or any other appropriate writ quashing/ setting aside the demand issued in form DRC 07- order dated 08.02.2021 passed by Respondent No.

7 for the F.Y 2019-20 whereby and whereunder the ex-parte demand order DRC 07 have been issued under Rule 100(1), 100(2), 100(3) & 142(5) of the CGST/BGST Rules, 2017 for the aforesaid month and through the said DRC-07 an ex parte demand has been raised for the aforesaid period a total liability of Rs.33,29,122/- (with breakup as - (a) CGST worth Rs.13,444,67/- with interest Rs.1,85,647/- and penalty Rs. 1,34,447/-thereupon; and (b) SGST Rs.13,444,67/- with interest Rs.1,85,647/- and penalty Rs. 1,34,447/-thereupon, has been imposed on the petitioner;

(iii) For issuing a writ of certiorari or any other appropriate writ quashing/ setting aside the Appellate order dated 16.11.2022 bearing Memo No. 447 passed in Appeal Case No. (ARN) AD0111220018116 by Respondent No.5 for the F.Y - 2019-20 (01.04.2019 to 31.03.2020) whereby and whereunder the appellate authority i.e. Respondent No.5 has rejected the appeal preferred by the petitioner on the ground of Limitation';

(iv) For quashing the notice bearing dated 05.12.2022 passed in certificate case no-09/2022-23 whereby the petitioner has been directed to deposit the amount of certificate initiated pursuant to the assessment orders impugned in the present case.

(v) For issuing a writ of mandamus or any other appropriate writ directing the Respondents not take any coercive action including recovery from bank account and third parties until pendency of the present writ application;

(vi) For issuing writ of mandamus and thereby directing the Respondents to refund a sum of Rs.2,68,894/- {Rs.1,34,447/- (CGST) ; Rs.1,34,447 (SGST) } for F.Y - 2019-20, which was deposited by the petitioner as ten percent of disputed tax amount as needed to be paid as pre-deposit (Section 107(6)(b) of Central Goods and Service Tax Act, 2017) before filing an appeal under CGST/SGST for the aforesaid period i.e. F.Y-2019-20;

(vii) For issuance of appropriate direction including the mandamus directing the respondents to pass fresh assessment order for the F.Y. 2019-20 upon considering the invoices available with the petitioner as also the as on date mapping of GSTR-3B and GSTR-2A to ascertain the actual tax liability, if any on the petitioner for the period April 2019 to March 2020;

(viii) For holding that the impugned assessment order dated 08.02.2021 and the appellate order dated 06.11.2022 have been issued in most illegal manner by Respondent No.7 and 5 respectively without examining the records and the supporting materials uploaded by the petitioner on its web-portal of GST;

(ix) For passing any such other order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

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It is brought to our notice that vide impugned order dated 16.11.2022, passed by the Respondent No. 5, namely the Additional Commissioner State Tax (Appeals), Purnia Division, Purnia, Bihar in Appeal No. (ARN) AD1011220018116 (Annexure-4), the appeal of the petitioner against the order dated 08.02.2021, passed by the Respondent No. 7, namely the Assistant Commissioner of State Tax, Saharsa Circle, Saharsa, Bihar (Annexure-2), and Summary of the order in Form GST DRC-07 dated 08.02.2021 in Reference No. ZD1002210067462 (Annexure-3) has been rejected merely on the ground of being barred by limitation. Both the orders were *ex parte* in nature. Petitioner has also prayed for quashing of the notice dated 03.11.2022 (Annexure-5).

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 16.11.2022, passed by the Respondent No. 5, namely the Additional Commissioner State Tax (Appeals), Purnia Division, Purnia, Bihar in Appeal No. (ARN) AD1011220018116 (Annexure-4); order dated 08.02.2021, passed by the Respondent No. 7, namely the Assistant Commissioner of State Tax, Saharsa Circle, Saharsa, Bihar (Annexure-2); Summary of the order in Form GST DRC-07 dated 08.02.2021 in Reference No. ZD1002210067462 (Annexure-3) and the notice dated 03.11.2022 (Annexure-5);

(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 15th of February, 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. 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	25.01.2023
Transmission Date	