IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.642 of 2023

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M/S Himanshu Traders (A Sole Proprietor Ship Firm), having its Registered Office at- Purani Bazar, Thana Road, Mairwa, P.S.- Mairwa, District- Siwan. through its Sole Proprietor Mrs.Gudan Kumari @ Guddan Kumari aged about 37 years (F).

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue, having its office at Room No. 46, North Block, P.O. and P.S. North Block, New Delhi- 110001
2. Joint Commissioner of State Tax, Siwan Circle, Siwan.
3. Assistant Commissioner of State Tax, Siwan Circle, Siwan.
4. Additional Commissioner of State Tax (Appeal), Saran Division, Chapra.

... ... Respondent/s

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Appearance :

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

(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 issuance of appropriate writ/order/direction for setting aside order bearing Order dated 05.09.2022 passed by Additional Commissioner (Appeal), Saran Division, Chapra in Appeal Case No. SN/GST-15/2022-23 for the financial year 2018-19 whereby

and whereunder the Appellate Authority rejected the appeal filed by the petitioner against the order dated 08.03.2020 passed by Respondent no. 3 on the ground of limitation after finding a delay of two month and further directed to issue GST APL-02.

(ii) For issuance of appropriate writ/order/direction for setting aside order bearing reference no. ZA1003200117141 dated 08.03.2020 passed by Assistant Commissioner of State Tax jurisdiction, Siwan Circle, Siwan, whereby and where under respondent rejected the Inpur Tax Credit Claim by the petitioner in Form GSTR3B for the financial year 2018-19 and an amount of Rs. 6,41,119/- was imposed as tax interest and penalty on the petitioner under Section 73(9) of BGST Act.

(iii) For setting aside order dated 07.03.2020 passed by Assistant Commissioner of State Tax Jurisdiction, Siwan Circle, Siwan, has rejected the input tax credit of the petitioner and imposed the tax including tax and penalty amounting of Rs. 6,41,119/- on the petitioner under section 73(9) of BGST Act and a direction was issued to raised demand in the Form of GST DRC 07.

(iv) For setting aside the demand notice issued in the Form of DRC 07.

(v) For issuance of appropriate writ/order/direction in the nature of mandamus directing the respondent authorities to release the Bank Account of the petitioner.

(VI) For issuance of an appropriate Writ(s), order(s), and/or direction(s), as Your Lordships may deem fit and proper in the facts and circumstances of this case in the interest of justice.

It is brought to our notice that vide impugned order dated 05.09.2022 passed by the Respondent No. 4 namely the Additional Commissioner of State Tax (Appeal), Saran Division, Chapra, in Appeal Case No.SN/GST-15/2022-23, the appeal of the petitioner against the order dated 08.03.2020 passed by Respondent No. 3, namely The Assistant Commissioner of State Tax, Siwan Circle, Siwan, under Section 73(9) of BGST Act, 2017; and summary of order dated 07.03.2020 in Form GST DRC-07 for the financial year 2018-2019, has 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 order dated 05.09.2022 passed by the Respondent No. 4 namely the Additional Commissioner of State Tax (Appeal), Saran Division, Chapra, in Appeal Case No.SN/GST-15/2022-23, and the order dated 08.03.2020 passed by Respondent No. 3, namely The Assistant Commissioner of State Tax, Siwan Circle, Siwan, under Section 73(9) of BGST Act, 2017; and summary of order dated 07.03.2020 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 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	