IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18354 of 2022

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M/s Rita Shree Enterprises Having it registered office Near Bharhmdeo Bhawan, Sonu Bhawan, Mithapur B Area, P.S.- Mithapur, District- Patna, Bihar through its Sole Proprietor Mr. Ram Krishna Kumar, aged about 37 years (M), S/o Chandra Prakash Sinha, R/o- Sonu Bhawan, Brahamdev Bhawan, Purandarapur, P.S.- Fulwari, District- Patna.

... ... 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, Patna South Circle, Patna West Division, Third Floor, Kautilya Bhawan, Anta Ghat, Gandhi Maidan, Patna.
3. Assistant Commissioner of State Tax, Patna South Circle, Patna West Division, Third Floor, Kautilya Bhawan, Anta Ghat, Gandhi Maidan, Patna.
4. Additional Commissioner of State Tax (Appeal), Patna West Division, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Anurag Saurav, Advocate

For the Respondent/s : Mr.Additional Solicitor General

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 09-01-2023

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 Memo no. 1971 dated 08.11.2022 passed by Additional Commissioner (Appeal), Patna West Division, Patna in Appeal Case bearing Appeal Case No.GST/PS-24/22-23(ARN No. AD100522001150B) for the financial year 2021-22 whereby and where under the Appellate Authority upheld the order bearing Order No. ZD100422006061 dated 21.04.2022 passed by Respondent no.4 and directed to issue APL-IV to the petitioner.

(ii) For Issuance of an appropriate writ/ order/ direction for setting aside order bearing reference no. ZD100422006061 dated 21.04.2022 passed by Respondent No.3 Assistant Commissioner of State Tax jurisdiction, South Circle, Patna West Division, Patna, whereby and where under respondent authority imposed interest and penalty on the petitioner against a wrong entry/credit of purchase in the return as

IGST, which was not availed by the petitioner and already remitted back through DRC 03, but respondent authority imposed interest as well as penalty against the said transaction under section 74 (9) of BGST Act.

(iii) For setting aside order dated 21.04.2022 passed by Assistant Commissioner of State Tax Jurisdiction, Patna South Circle,Patna West Division, Patna, has passed an order under section 74(9) read with rule 142(5) of BSGST Act read with section 20 of IGST Act, 2017 whereby and where under respondent authority imposed interest and penalty on the petitioner against a wrong Input Tax Credit in IGST amounting Rs. 14,78,733 on the basis of auto populated GSTRN-2A in their GSTR3B Return and Respondent authority not considered the fact that the said transaction was not availed by the petitioner and already paid through DRC 03, but respondent authority imposed interest as well as penalty against the said transaction under section 74 (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 an appropriate Writ(s), and/or direction(s), as Your Lordships may deem fit and proper I the facts and circumstances of this case in the interest of justice.

It is brought to our notice that vide impugned order dated 08.11.2022 passed by the Respondent No. 4, namely, Additional Commissioner of State Taxes (Appeal), Patna West Division, Patna in Appeal Case No. GST/PS-24/22-23 (ARN No. AD100522001150B), the appeal of the petitioner against the order dated 21.04.2022 passed by the Respondent No. 3, namely, Assistant Commissioner of State Taxes, Patna South Circle, Patna West Division, Third Floor, Kautilya Bhawan, Anta Ghat, Gandhi Maidan, Patna in Ref. No. ZD100422006061 and the summary of order dated 21.04.2022 issued in form GST DRC-07, has been rejected. The orders appeared to be *ex parte* in nature.

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 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 08.11.2022 passed by the Respondent No. 4, namely, Additional Commissioner of State Taxes (Appeal), Patna West Division, Patna in Appeal Case No. GST/PS-24/22-23 (ARN No. AD100522001150B), the order dated 21.04.2022 passed by the Respondent No. 3, namely, Assistant Commissioner of State Taxes, Patna South Circle, Patna West Division, Third Floor, Kautilya Bhawan, Anta Ghat, Gandhi Maidan, Patna in Ref. No. ZD100422006061 and the summary of order dated 21.04.2022 issued 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 23.01.2023 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)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	