IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2890 of 2020

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Vaishno Traders a proprietary concern through its proprietor manish Kumar Mittal (Male) aged about 39 years) son of Ajay Kumar Mittal having its erst while office at O, Reksho Pland Campus, Sadar Road, Munavvar Nagar, Zero Mile Araria, Bihar 854326 and at present residing at near Shilpi Handi Caraft, P.O. and P.S. Kutubsher, Saharanpur, Uttar Pradesh 247001.

... ... Petitioner/s

Versus

1. State of Bihar through Joint Commissioner of State Tax, Forbesganj Circle, Forbesganj.
2. Superintendent, Central Goods and Services Tax Act, Forbesganj.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.D.V.Pathy, Advocate
For the UOI	:	Mr. Anshuman Singh Sr. SC CGST&CX
For the State	:	Mr.Vikash Kumar (SC11)
		Mr. Sadashiv Tiwari, Adv

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-02-2024

The petitioner, an assessee, under the Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as the ‘BGST Act’) and Central Goods and Services Tax Act (hereinafter referred to as the ‘CGST Act’), has challenged the assessment orders dated 12.10.2019.

2. We have heard Mr. D.V. Pathy, learned counsel appearing on behalf of the petitioner, Mr. Vikash Kumar (SC-11), learned Government Advocate appearing on behalf of the State and Mr. Anshuman , learned Central Government Standing

Counsel.

3. Mr. D.V. Pathy, learned counsel for the petitioner, has informed us that the Central Tax Authority had cancelled the registration of the petitioner and the assessment orders are issued later to the said cancellation. It is pointed out that the assessment is said to have been initiated on a report of the Central Investigation Bureau of the State Taxes, Bihar, Patna, which inspection report, referred to in the show cause notice, was never supplied to the petitioner. An inspection is said to have been carried out in the registered premises of the petitioner and finding no activity, the petitioner was alleged with fraudulent registration. It is submitted that the said inspection by the State tax authorities was conducted after the cancellation of the registration. There is absolutely, no detail supplied in the order dated 12.10.2019, issued under Section 74 of the BGST Act and the detailed objections were ignored by the Assessing Officer.

4.The learned Government Advocate, on the other hand, points out that the assessee has an alternative efficacious remedy of filing an appeal under the BGST Act and there is no reason to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India. It has been argued that there was a detailed inspection report received of fake receipts and payments, in the alleged transaction of iron scrap without physical transactions. There was fraudulent input tax claimed, which also has been reversed. The Central Investigation Bureau of the State Taxes, had conducted a detailed inquiry, and based on the inspection report, the assessment orders have been passed. In fact, an inspection was carried out by the Assessing Officer too, the detailed report of which is produced before the Court. The writ petition is an abuse of process of Court, is the submission.

5. Before, we look into the inspection report, we have to also notice the contours of the jurisdiction under Article 226 of the Constitution of India to interfere with appellable orders laid down by the Hon'ble Supreme Court in **State of H.P & Ors. v. Gujarat Ambuja Cement Limited & Anr.; (2005) 6 SCC 49 9**. It has been held that if an assessee approaches the High Court without availing the alternate remedy, it should be ensured that the assessee has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction. While reiterating that Article 226 of the Constitution confers very wide powers on the High Court, it was clarified that nonetheless the remedy of writ is an absolutely

discretionary remedy. The High Court, hence, can always refuse the exercise of discretion if there is an adequate and effective remedy elsewhere. The High Court can exercise the power only if it comes to the conclusion, that there has been breach of principles of natural justice or that due procedure required for the decision has not been adopted. The High Court would also interfere, if it comes to a conclusion that there is infringement of fundamental rights or where the orders and proceeding are wholly without jurisdiction or when the vires of an Act is challenged and when there is a clear abuse of process of law.

6. In the present case, we first look at the cancellation effected, which is evidenced from the show cause notice and the orders produced at Pages-181 and 182 of the memoranda, as Annexures-7 and 8. The said action is initiated by the Central Tax Authority and the show cause notice indicates the Tax Officer having threatened cancellation of registration for the reason ‘others’. This is no reason, under law, and it shows the mechanical manner in which the notice has been issued.

7. Learned counsel for the CGST, however, points out that Annexure-8 contains the reasons, which is also the inspection conducted by Officers of the CGST & CX (Hqr) Patna-II, having found the business to be not existing in the

registered place of business.

8. The show cause notice is dated 30.11.2018, and the cancellation of registration is of 21.02.2019. We cannot for a moment countenance the argument of the Central Government Counsel, that the reasons stated in the order of cancellation is sufficient to validate the same; especially when there is absolutely no reason indicated in the show cause notice and proceedings have been carried out without any application of mind. There is clear violation of principles of natural justice.

9. In any event, we are not concerned with the cancellation of registration as of now, and there is no challenge against the same before us. All the same this would not restrict us from deprecating the manner in which cancellations are issued mechanically, without any legal basis and in total violation of the principles of natural justice. The Controlling Officers of the department would do well, to caution their officers, from carrying on such excesses, in the guise of exercise of statutory powers.

10. Be that as it may, the cancellation is of the year 2019; specifically in the month of February and the assessment orders are for the months of June-2018 to January-2019, produced as Annexures- 10 and 11 series, in the writ petition.

Notices issued under Section 74 of the BGST Act for the months are identical, and we refer to the one issued for the month of July-2018, as revealed from Page No. 198; the order dated 12.10.2019. It is stated that the tax payer had filed GST and CGST returns for the tax period July-2018 and then speaks of an inspection report dated 31.07.2019, received from the Central Investigation Bureau of State Taxes, Bihar, Patna, that the tax payer is involved in fake receipt of iron scrap without physical transaction and from fake addresses of the principal place of business. We have to notice, that there are no details stated in the order under Section 74 of the BGST Act nor has the report been enclosed with the same. The order then goes on to speak about the enquiry made by the Assessing Officer, who found the allegations to be *prima facie* correct. Summons is said to have been issued under the BGST Act read with CGST Act on 31.08.2019, to produce the tax invoices of cash transactions, bank statements and other essential documents, to prove the transactions. Despite proper and adequate time granted to the tax payer, the required documents were not produced is the further reason stated in the order. The order in its operative portion requires the assessee to reply with all requisite documents.

11. The assessee has replied to all the notices, by separate objections, which comprehensively deals with the scanty allegations put to the assessee, by the order under Section 74 of the BGST Act. The cancellation of registration on 21.02.2019, was specifically pointed out which makes the inspection carried out by the State Tax Officer on 16.07.2019 superfluous. It is also clear that despite the cancellation having been noted, on the basis of inspection conducted, there is no proceeding initiated by the Central Tax Authority and the order of cancellation specifically indicates, that there are no amounts due as tax, from the assessee. The cancellation was effected only on finding the business to be non-existent on the registered premises.

12. The reply of the assessee, alleged that the orders were issued without any investigation, and the demand has been raised merely on the report of the Central Bureau of Investigation of State Taxes, Bihar, Patna, which was never supplied or provided to the assessee. The assessee had raised almost 28 objections in the reply. None of these objections were considered, and the Assessing Officer passed the orders at Annexures-10 and 11 mechanically, with only the figures shown.

13. The learned Government Advocate has specifically referred to the counter affidavit and the inspection report of the State Tax Officer, produced as Annexure-A dated 16.07.2019. The said report is said to have been prepared, on physical inspection of the premises, wherein, there was no business found to be existing; we reiterate after the cancellation effected on 21.02.2019. If the business was existing at that point of time, definitely it would have been violation of the statutory provisions, since the petitioner's registration was cancelled. It is based on the said inspection that the summons dated 31.08.2019 was issued as Annexure-B, produced in the counter affidavit.

14. Annexure-B speaks of the investigation carried out without any of the facts disclosed in investigation being stated therein. There is also a mechanical recital of the summons issuing officer having reasons to 'believe' that the petitioner is in possession of documents and things, which are relevant for the above inquiry. It is stated in the counter affidavit, that on the assessee not responding to the summons, the notice in prescribed form of DRC-I was served through GST Portal for the tax period, from June-2018 to January-2019. The reply filed was found to be unsatisfactory; a bland statement not supported by any reasoning and the counter affidavit indicates the

elaborate reasons; not available in the orders impugned.

15. We have to immediately notice the decision in **Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi; AIR 1978 Supreme Court 851,** in which the Hon'ble Supreme Court has categorically held that what has not been stated in the impugned order, cannot be substituted by way of a counter affidavit.

16. The counter affidavit also speaks of the information supplied by Additional Excise and Taxation Commissioner-I Punjab on Annexure-E. Annexure-E dated 22.01.2019 alleged huge inward supplies made from dealers of other States; which supplies are bogus, leading to wrongful claim of ITC by the dealers in Punjab. But for the above letter, no further report is seen produced even in the counter affidavit, as spoken of in the notice and Order under Section 74 of the BGST Act. We are surprized that merely on the petitioner being named in Annexure-E, the returns were rejected and the input tax claimed, reversed.

17. From the totality of the circumstances, as found above, we find absolutely no reason to sustain Annexure-10 and 11 orders issued under Section 74 of the BGST Act, and there is

absolute & total violation of principles of natural justice, which enables this Court to invoke its extraordinary jurisdiction under Article 226 of the Constitution of India to interfere with the assessment orders despite existence of alternative remedies as per Gujarat Ambuja (supra). We make it clear, that this would not preclude the Assessing Officer from issuing a proper notice under the BGST Act with details of the allegations on which the petitioner is sought to be assessed, but, only if the period of limitation to carry out assessment as per the statute is not yet over. We have found the Assessing Officer having violated principles of natural justice in an assessment proceeding and in the said circumstance, the pendency of the writ petition, cannot save limitation.

18. The writ petitions are allowed with the sole reservation, with just exceptions, as above.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Ranjan/..-

AFR/NAFR	NA
CAV DATE	NA
Uploading Date	21.02.204
Transmission Date	NA