

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18413 of 2021

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M/s Shaurya and Company a Proprietorship Firm having its Office at 23, Kaveri Apartment, Bandar Bagicha, Opp Santosh Apartment Frazer Road, Patna, through its Proprietor Gopaal Das Jakhodia, aged about 65 years (Male), Son of Balkishna DAs Jakhodia, Residing at Flat No. 23, Kaveri Apartment, Bandar Bagicha, Frazer road Patna, opp 9 to 9, Phulwari, Patna P.O. - Kotwali, P.S. - Kotwali Patna, District- Patna State Bihar, PIN 800001.

... .. Petitioner/s

Versus

1. The Union of India Through the Secretary Department of Revenue Ministry of Finance, North Block, New Delhi - 110001.
2. The Secretary Department of Revenue, Ministry of Finance, North Block, New Delhi - 110001.
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), West Division, Patna.
6. The Joint Commissioner of State Tax, Gandhi Maidan Jurisdiction, Gandhi Maidan, Patna West, Bihar.
7. The Assistant Commissioner of State Tax, Gandhi Maidan Jurisdiction, Gandhi Maidan, Patna West, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Brisketu Sharan Pandey, Advocate Mr. Vijay Kumar Singh, Advocate
For the Respondent/s	:	Dr. K.N. Singh (ASG) Mr. Anshuman Singh, Sr. SC, CGST & CX Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-12-2022

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

“For issuing a writ of certiorari or



any other appropriate writ quashing/ setting aside the assessment order dated 30.12.2020 (Annexure-P/1) issued by Assistant Commissioner of State Tax, Gandhi Maidan Jurisdiction, Gandhi Maidan, Patna West, Bihar (Respondent No.7) whereby and whereunder the aforesaid Assessment Officer has quantified the tax liability, interest and penalty for the period April 2019 to March 2020 and thereby has imposed cumulative liability of Rs 33,70,165. 79 for the aforesaid period towards IGST. SGST, CGST tax liability, interest for 211 days @ 1.5% and penalty.

(ii) For issuing a writ of certiorari or any other appropriate writ quashing setting aside the order dated 30.12.2020 (Annexure-P2) bearing Reference No/D1012200298034 issued under section 73 of GST Act (uploaded on the web portal) issued by Assistant Commissioner of State Tax, Gandhi Maidan Jurisdiction, Gandhi Maidan Patna West, Bihar (Respondent No.7) whereby and whereunder the aforesaid Assessment Officer has quantified the tax liability, interest and penalty for the period April 2019 to March 2020 and thereby has imposed cumulative liability of Rs.33,70,165.79 for the aforesaid period towards IGST SGST, CGST tax liability, interest for 211 days @ 1.5% and penalty.

(iii) For issuing a writ of certiorari or any



other appropriate writ quashing/ setting aside the Demand DRC 07 dated 30.12.2020 (Annexure-P/3) bearing Reference No.ZD1012200298034 issued under section issued under Rule 142 (5) (uploaded on the web portal) issued by Assistant Commissioner of State Tax. Gandhi Maidan Jurisdiction, Gandhi Maidan, Patna West, Bihar (Respondent No.5) whereby and whereunder the aforesaid Assessment Officer has issued demand order in terms of order dated 30.12.2020 (Annexure-P1) and accordingly raised demand towards tax liability, interest and penalty for the period April 2019 to March 2020 to tune of imposed cumulative liability of Rs. 33,70,165.79 for the afraid period towards IGST, SGST, CGST tax liability, interest for 211 days @ 15% and penalty.

(iv) For issuing a writ of certiorari or any other appropriate writ quashing setting aside the order dated 18.08.2021 (Annexure-P4) bearing Memo No. 1130 issued by Additional Commissioner of State Tax (Appeal), Patna West Division, Patna Bihar (Respondent No 5) whereby and whereunder the aforesaid Appellate Authority has upon rejection of the appeal has modified the impugned assessment order dated 30.12.2020 (Annexure-P/1) by decreasing



the amount of interest from Rs.2,94,942- to Rs 5,360- in the aforesaid assessment order and thereafter has fixed the cumulative liability to the tune of Rs 30,80,585/-for the aforesaid period towards IGST, SGST, CGST tax liability, interest for 211 days 1.5% and penalty.

(v) For issuing a writ of certiorari or any other appropriate writ quashing setting aside the summary of demand by the appellate authority issued under FORM API GST-04 dated 01.09.2021 (Annexure-P/5) bearing order No.ZD1008210170049 issued by Additional Commissioner of State Tax (Appeal), Patna West Division Patna Bihar (Respondent No.5) whereby and whereunder the aforesaid Appellate Authority upon rejection of the appeal has modified the impugned assessment order dated 30.12 2020 (Annexure-P/1) by decreasing the amount of interest from Rs 2,94,942-to Rs.5,360/- in the aforesaid assessment order and thereafter has fixed the cumulative liability to the tune of Rs 30,80, 585/- for the aforesaid period towards IGST SGST CGST tax liability, interest for 211 days @ 15% and penalty.

(vi) For issuing writ of mandamus and thereby directing the Respondents to refund a sum of Rs.2,79,567/-paid by the petitioner



as pre-deposit worth 10% 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 month April 2019 to March 2020.

(vii) For issuing writ of mandamus and thereby directing the Respondents to refund (i) a sum of Rs.35,10,000/- as excess IGST paid by the petitioner for the period February 2020 as also (ii) refund the excess amount of IGST worth Rs 2,51,100/- paid as excess IGST instead of CGST and SGST in the month December 2019 which has been accepted by the Respondent No 5 while issuing the impugned appellate order dated 18.01.2020 (Annexure-P/3) wherein it has been observed that the petitioner has right to claim refunds against the excess IGST paid by him. It was incumbent upon the appellate authority i.e. Respondent No 5 to have issued the order of refunds in terms of section 107 (11) of GST Act, 2017 which cast obligation on the appellate authority to assess the demand afresh without remitting back case to the assessment officer.

(viii) For issuing writ of mandamus as a consequential relief and thereby directing the Respondents to allow the petitioner amending the return GSTR-3B for month



February 2020 and petitioner may be allowed to amend and refile/upload its correct tax liability in Form GSTR-3B on the basis invoices/receipts.

(ix) 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;

(x) 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.”

It is brought to our notice that vide impugned order dated 18.08.2021 passed by the Respondent No. 5, namely the Additional Commissioner of State Tax (Appeal), Patna West Division, Patna, in Appeal Case No.ARN AD1002210043742, Memo No. 1130, the appeal of the petitioner against the order dated 30.12.2020 passed by Respondent No. 7, namely The Assistant Commissioner of State Tax, Gandhi Maidan Jurisdiction, Gandhi Maidan, Patna West, Bihar, under Section 73 of GST Act, 2017 and summary of order dated 30.12.2020 in Form GST DRC-07 for the period April, 2019 to March, 2020, 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 18.08.2021 passed by the Respondent No. 5, namely the Additional Commissioner of State Tax (Appeal), Patna West Division, Patna, in Appeal Case No.ARN AD1002210043742, Memo No. 1130, the order dated 30.12.2020 passed by Respondent No. 7, namely The Assistant Commissioner of State Tax, Gandhi Maidan Jurisdiction, Gandhi Maidan, Patna West, Bihar, under Section 73 of GST Act, 2017 and summary of order dated 30.12.2020 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 09.01.2023 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 stands 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)

K.C.Jha/-DKS

AFR/NAFR	
CAV DATE	
Uploading Date	26.12.2022
Transmission Date	

