**(2020) 11 PAT CK 0011**

**In the Patna High Court**

**Case No :** Civil Writ Jurisdiction Case No. 7877 Of 2020

Lalan Kumar APPELLANT

Vs

State Of Bihar And Ors RESPONDENT

**Date of Decision :** 04-11-2020

**Acts Referred:**

Central Goods And Services Tax Act, 2017 — Section 16, 37, 39, 44, 62
Constitution Of India, 1950 — Article 226

**Citation :** (2020) 11 PAT CK 0011

**Hon'ble Judges :** Sanjay Karol, CJ;S. Kumar, J

**Bench :** Division Bench

**Advocate :** Gautam Kumar Kejriwal, Pawan Kumar

**Final Decision :** Disposed Of

## Judgement

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

"a) For issuance of a writ in the nature of certiorari for quashing of an appellate order dated 05.03.2020 issued vide memo number 51 Bhagalpur whereby the appeal preferred by the petitioner has been rejected;

b) For issuance of a writ in the nature of certiorari for quashing of the ex parte order of assessment dated 14.09.2019 issued vide reference number 690 in form GST ASMT- 13 by the Respondent No. 3.

c) For holding and a declaration that once the petitioner has already filed a statutory return in form GSTR 3B for the month of July 2019, the impugned order of assessment dated 14.09.2019 would stand merged with the said return insofar as the actual figures of purchase, sale and liability of tax admitted and paid by the petitioner is concerned;

d) For further holding and a declaration that the determination of tax and interest liability under section 62 of the Goods And Services Tax Act, 2017 (hereinafter referred to as "the act" for short) is based on absolute presumption of figures and cannot be a substitute for actual figures of purchase, sale, tax liability admitted by the petitioner in the return for the tax period in question;

e) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case."

Petitioner, inter alia, has assailed the order dated 5.3.2020 passed by Additional Commissioner of State Taxes (Appeal), Bhagalpur Division, Bhagalpur, in Appeal Case No. BHGST 07/19-20, on the ground that contentions raised in the appeal, more specifically qua applicability of the provisions of Sections 16, 37, 39, 44 and 62 of the Central Goods and Services Tax Act, 2017 (hereinafter to be referred as 'the Act'), have not been considered at all.

It is also brought to our notice that the Tribunal envisaged under the provisions of the said Act has yet not been constituted, prompting the petitioner to initiate the instant proceedings instituted under Article 226 of the Constitution of India.

Having heard learned counsel for the parties, we are of the considered view that in the attending facts and circumstances, it would be only more appropriate, as is also so submitted by Shri Gautam Kumar Kejriwal, learned counsel for the petitioner, that the petitioner approaches the appellate authority highlighting the issues raised before this Court, as also pointing out the errors apparent on the face of record, if any, enabling the authority to reconsider the petitioner's case based on the material so placed.

Shri Pawan Kumar, learned counsel appearing for the State/authority, states that petitioner failed to exercise his statutory right as envisaged under Section 62 of the Act, leaving no option with the authority to pass the order.

Responding to the same, Shri Kejriwal, learned counsel, argues that even after passing of the order under Section 62 of the Act, petitioner has a right in law, to take recourse to the provisions, prior thereto.

Well, on merits, we do not express any opinion and leave it to the wisdom of the appellate authority to consider all these issues, to the attending facts.

We are inclined to pass such an order, more so when we notice that such pleas were taken not for the first time before this Court but before the appellate authority.

As such, as jointly prayed for, present petition is being disposed of in the following terms:-

(a) Petitioner shall appear before the appellate authority, either through physical or digital mode on 30.11.2020 at 10.30 A.M.;

(b) The appellate authority shall consider all aspects and take a decision, preferably within a period of two months thereafter;

(c) All issues are left open for we have not expressed any opinion on merits;

(d) It shall be open to the appellate authority to pass a fresh order as per law if so required.

(e) Till such time decision is taken by the authority, no coercive action for recovery of the amount shall be taken against the petitioner.

No other submission is made on behalf of either parties.

Interlocutory application, if any, shall also stand disposed of.

Petition stands disposed of.

 