

(2022) 01 PAT CK 0054

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 444 Of 2022

M/S Manshi Automobiles

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 17-01-2022

Acts Referred:

Bihar Goods And Service Tax Act, 2017 — Section 75

Citation : (2022) 01 PAT CK 0054

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

Bench : Division Bench

Advocate : Alok Kumar, Dr. Krishna Nandan Singh, Vikash Kumar

Final Decision : Disposed Of

Judgement

Petitioner has prayed for the following relief(s):

(i) For consequential writ or order for quashing of summary of order issued in Form GST DRC 07 dated 25.02.2020 by the Assistant Commissioner,

State Tax, Danapur Circle, Danapur, District Patna the Respondent no.5 under Section 75 of the GST Act whereby the interest has been imposed on

gross amount without deducting the Input Tax Credit which is already paid by the petitioner and in utter violation of the principle of natural justice as

the same was passed without issuance of show cause notice.

(ii) For further issuance of consequential writ or order for quashing of orders dated 10.08.2021 issued vide Memos No. 1037, 1038 and 1039 all dated

13.08.2021 by the Respondent No. 4, whereby the appeal preferred by the petitioner has been rejected without any application of mind to the grounds

of appeal raised by the petitioner.

(ii) For further issuance of a direction or order restraining the Respondent No. 5

from taking any coercive action for recovery of the amount in demand from the petitioner during the pendency of the present writ application or for a direction to refund of the part or whole of the amount in case recovered from the petitioner.

(iv) For grant of any relief or reliefs to which the petitioner is entitled in the facts and circumstances of the case.â??

It is brought to our notice that vide impugned orders dated 10.08.2021 (Annexure-2 series) passed by the Respondent No. 4 namely the Additional Commissioner of State Taxes (Appeal), Patna West Division, Patna in different appeals (Annexure-2 series), the appeals of the petitioner against the orders dated 25.02.2020 passed by Respondent No.5, namely The A.C.S.T., Danapur Circle, Danapur, district Patna for different tax periods in Form GST DRC-07, have been rejected, allegedly without application of mind to the grounds of appeal raised by the petitioner.

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.

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. 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 orders dated 10.08.2021 (Annexure-2 series) passed by the Respondent No. 4 namely the Additional

Commissioner of State Taxes (Appeal), Patna West Division, Patna in different appeals (Annexure-2 series), and the orders dated 25.02.2020 passed

by Respondent No.5, namely The A.C.S.T., Danapur Circle, Danapur, district Patna for different tax periods 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 in each case 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 7th February, 2022 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 during the time of current Pandemic [Covid-19] 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.