

(2022) 04 PAT CK 0068

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4809 Of 2022

M/S Paliwal Drug Agencies

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 18-04-2022

Acts Referred:

Bihar Goods And Services Tax Act, 2017 — Section 50(3), 73(1), 73(9)

Citation : (2022) 04 PAT CK 0068

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

Bench : Division Bench

Advocate : Archana Sinha @ Archana Shahi, Vikash Kumar

Final Decision : Disposed Of

Judgement

Petitioner has prayed for the following relief(s):

- a) For issuance of writ of Certiorari , quashing appellate order dated 26.11.2021 (Annexure- 2) issued by Respondent no 4 without considering the invoices relied and filed by the Petitioner for taking valid Input tax credit of Rs 105395&' - under CGST , Rs. 105395&' -under SGST AND Rs. 7314.47 under IGST and violated the principles of natural justice and further quashing of order dated 9.03.2020 (Annexure- I) and DRC-07 Dated 27.11.2021(Annexure- 3) by which tax of Rs 21,15,230` - interest of Rs 1,11,2651- and penalty of Rs 2,20,792 was imposed under Sec 73(1) , 50(3) and 73(9) of Bihar Goods and Service Tax Act .
- b) For directing the respondents for refunding the input credit withdrawn from the petitioner account.
- c) For restraining the attachment of bank account of the petitioner as the notices were issued by the Department to the concerned bank for attachment of account number 133605501071 which is a CC Account in ICICI bank station road must the poor, the bank account is in name of Paliwal drug agencies station road Samastipur. The Department has also issued notice for attachment of bank account in the name of firm Kalu Ram Chaturvedi whose proprietor is Rupa

Paliwal which is in Punjab National bank Khudi Ram Bose mad Mouza. d) For any other consequential relief or reliefs for which the petitioner is found entitled during course of hearing of this writ petition.

It is brought to our notice that vide impugned order dated 26.11.2021, passed by the Respondent No. 4, namely, the Joint Commissioner of State Taxes (Appeal), Darbhanga, in Appeal No. AD1003210018016; summary demand dated 27.11.2021 in form GST APL-04, the appeal of the petitioner against the order dated 09.03.2020, passed by Respondent No. 3, namely, the Assistant Commissioner of State Tax, Samastipur, Darbhanga, in GSTIN 10ANSPP4398R1ZY; and summary of order dated 14.03.2020 in Form GST DRC-07 for the period 2018-19, has been rejected by a cryptic, misconceived and non-speaking order.

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 reasons sufficient 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 26.11.2021, passed by the Respondent No. 4, namely, the Joint Commissioner of State Taxes (Appeal), Darbhanga, in Appeal No. AD1003210018016; summary demand dated 27.11.2021 in form GST APL-04, the order dated 09.03.2020, passed by Respondent No. 3, namely, the Assistant Commissioner of State Tax, Samastipur, in GSTIN 10ANSPP4398R1ZY; and summary of order dated 14.03.2020 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 Respondent No. 3, namely, the Assistant Commissioner of State Tax, Samastipur, on 09.05.2022 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.