

(2021) 09 PAT CK 0040

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 6509 Of 2021

M/S Shashikant Singh

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 09-09-2021

Acts Referred:

Constitution of India, 1950 — Article 265
Central Goods And Service Tax Act, 2017 — Section 16, 16(4), 39, 164(3)
Bihar Goods and Service Tax Act, 2017 — Section 16(4)

Citation : (2021) 09 PAT CK 0040

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

Bench : Division Bench

Advocate : Brisketu Sharan Pandey, Abhishek Kumar, Dr. K.N. Singh, Anshuman Singh, Vikash Kumar

Final Decision : Disposed Of

Judgement

Petitioner has prayed for the following relief(s):

"a. For issuing writ of certiorari for quashing the Summary of Order (demand order issued in FORM GST DRC 07) dated 21.03.2020 issued for the tax period September 2018, December 2018 and March 2018 wherein a demand of tax, interest and penalty has been demanded from the Petitioner.

b. For issuing writ/writs, order/orders including the writ of certiorari for quashing the order dated 19.03.2020 issued for the tax period September 2018, December 2018 and March 2018 wherein a demand of tax of Rs. 26,81,102.00/-, interest of Rs. 1,97,061/- and penalty of Rs. 2,68,110/- totalling to Rs. 31,46,273/- for CGST and SGST has been levied against the Petitioner.

c. For issuing writ/writs, order/orders including the writ of mandamus to the Respondents directing them to bring on record the FORM DRC 01 and DRC 01A which was supposed to be issued to the Petitioner and served electronically through the GST Portal but was never served.

- d. Further for issuing writ/writs, order/orders including the writ of certiorari and thereby quash the FORM DRC 01 and DRC 01A which was supposed to be issued to the Petitioner and served electronically through the GST Portal but was never served through such modes.
- e. For issuing writ/writs, order/orders including the writ of certiorari and thereby quashing the attachment notice issued in FORM DRC 13 dated 09.01.2021 whereby notices have been issued to the third parties (including bank and customers) for the purpose of the recovery.
- f. For issuing writ/writs, order/orders including the writ of Mandamus and thereby directing the Respondents including the Bank Respondent (Respondent No 9) to the unfreeze/unattach the Bank Account having A/c No. 10839120015 which was frozen/attached vide FORM DRC 13 dated 09.01.2021.
- g. For issuing writ/writs, order/orders including the writ of Mandamus and thereby directing the Respondents to refund the amount already recovered in pursuance of the recovery of amount as demanded through FORM GST DRC 07 dated 21.03.2020.
- h. For issuing writ/writs, order/orders including the writ of mandamus after remanding the case back to the assessing authority and directing him/her to assess the liability of the Petitioner afresh after considering the submissions and merits of the case and following all the due procedure as provided in the CGST/BGST Act .
- i. For issuing writ/writs, order/orders including the writ of certiorari and thereby quashing the Notification No. 49/2019 Central Tax dated 09/10/2019 whereby and where under rules under the CGST Rules have been retrospectively amended which resulted into the current tax demand from the Petitioner.
- j. For reading down section 16 (4) of the CGST/BGST Act in a manner which this court deems fit in order to enable the petitioner to claim its rightful input tax credit given the fact that the petitioner has filed its GST returns under section 39 of the act within the time period as extended by the Respondents.
- k. For holding that GSTR 3B is not a return under Section 39 of the CGST Act.
- l. For holding that the actions of Respondents of rejecting the utilization of Input Tax Credit by the Petitioner is violative of Article 265 of the Constitution of India.
- m. For holding that the petitioner who failed to file return claiming Input Tax Credit for the period September 2018, December 2018 and March 2018 within the prescribed period of Section 16 of GST Act cannot be deprived of its genuine claim to avail Input on the purchase made by it during the aforesaid period specially when the time limit to file the return were extended by the Respondents only.
- n. For issuing appropriate direction to Respondents No.1 to 3 to issue appropriate notification and thereby creating provision for extension in availment of Input Tax

Credit u/s 16 of GST Act as and when extension is granted for filing of GST Returns - GSTR-1 and GSTR-3B.

o. For holding that the Section 164(3) of the CGST Act which gives the power to retrospectively amend the rules is ultravires and amounts to the excessive delegation of legislative powers.

p. For holding that the imposition of liability of tax, interest and penalty on Petitioner by the Respondent is illegal and void.

q. For holding that the Respondents cannot impose any liability of interest as well as tax on the Petitioner when there has been no loss of revenue to the state.

r. For holding that once the Petitioner has availed the Input Tax Credit by making entries in its books of account, he cannot be denied utilization of Input Tax Credit.

s. For directing the Respondents not to take any coercive action against the Petitioner until the Pendency of the proceedings.

t. To pass any other order/orders which it may deem fit in the facts and circumstances of the case and within the ends of equity, justice and good conscience."

Shri Brisketu Sharan Pandey, learned counsel for the petitioner has raised several contentions, including non-application of mind on the part of the authorities; the order passed without affording adequate opportunity of hearing; for extraneous factors, only to cover up inaction on the part of the authorities, who after attachment, recovered the amount from the petitioner's Bank Account and that no adequate opportunity of hearing was afforded to the petitioner before carrying out the impugned action.

We reject all the contentions raised by the petitioner in the writ petition, for we do not find the action of the authorities to be motivated, malicious or passed for extraneous considerations. In fact, the officers have passed the order protecting not only the interest of the Revenue, but also the assessee, for had it not been so, then the original order dated 19th of March, 2020, (Annexure-P/1 series), whereby the assessment carried out and quantified at Rs.31,46,273/-, would not have been rectified vide subsequent order dated 1st of March, 2021 (Annexure-R/3), whereby the amount stood reduced to Rs. 13,78,380/-.

As such, we reject all the submissions made by the petitioner, save and except only one issue which merits consideration and that being the original order dated 19th of March, 2020, passed without affording opportunity of hearing to the petitioner.

Undisputedly, the information was not uploaded on the GST Portal (Form DRC 01 and DRC 01A) and the notice cannot be said to have been served upon the petitioner, for copy of the receipt of the Gmail does not indicate the petitioner's name.

As such, on this short ground alone, we dispose the petition in the following terms:

(a). We quash the original order dated 19th of March, 2020, passed by Respondent No. 8, namely, Assistant Commissioner of State Tax, Patna Central, Patna, in GSTIN-10ACFPS1886H2ZK with respect to the period September 2018, December 2018 and March, 2019, [Assessment Order 2018-19] (Annexure-P/1 series);

(b) Petitioner shall appear before the said officer on 27th of September, 2021 at 10:30 A.M., if possible, through digital mode, who shall, after considering all the materials placed on record by the parties, pass a fresh and speaking order, in accordance with law, of course in compliance of principles of natural justice, within a period of two months from the date of appearance of the petitioner;

(c) Copy of the speaking order shall be supplied to the parties;

(d) Petitioner undertakes to fully cooperate in such proceedings and not take unnecessary adjournment:

(e) Liberty reserved to the petitioner to raise any other issue, subject matter of the present petition, by way of separate proceedings;

(f) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(g) 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;

(h) If possible, proceedings during the time of current Pandemic [Covid-19] be conducted through digital mode;

(i) Needless to add, petitioner/parties shall be at liberty to place additional material(s), if so required and desired;

(j) Also, if the amount recovered is in excess of the demand to be assessed in terms of the fresh order, the same shall be remitted into the Bank Account of the petitioner within a period of two months thereafter;

(k) Equally, liberty reserved to the petitioner to challenge the order, if so required and desired, in accordance with law, by way of filing an application under the provisions of both Central Goods and Services Tax Act, 2017 and Bihar Goods and Service Tax Act, 2017, as may be applicable;

(l) 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.

(m) We place on record, with appreciation, the assistance rendered by Dr. K.N. Singh, learned Additional Solicitor General as also Shri Vikash Kumar, learned

Standing Counsel No. 11.

The present writ petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, shall stand disposed of.