(2022) 11 PAT CK 0040

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2346 Of 2022

M/S Shibbu Singh APPELLANT

Vs

State Of Bihar RESPONDENT

Date of Decision : 16-11-2022

Acts Referred:

Central Goods and Service Tax Act, 2017 — Section 107(6)(b)
Bihar Goods and Service Tax Act, 2017 — Section 74

Citation : (2022) 11 PAT CK 0040

Hon'ble Judges : Sanjay Karol, CJ;Partha Sarthy, J

Bench : Division Bench

Advocate : Akash Chaturvedi, Vivek Prasad

Final Decision : Disposed Of

Judgement

1. Petitioner has prayed for the following relief(s):

"I. For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the Appellate order dated 06.01.2022 bearing Memo No. 3084 and APL-04 No. ZD1001220029248 dated 08.01.2022 passed in Appeal Case No. AD1002210030286 by Respondent No. 5 for the F.Y – 2019-20 (01.01.2019 to 30.9.2019) whereby and where under the appellate authority i.e. Respondent No. 4 has affirmed the order dated 09.03.2020 passed by the Respondent No. 7 and thereby has rejected the appeal preferred by the petitioner;

II. For issuance of writ in the nature of certiorari for quashing the summary assessment order issued under DRC 07 vide order no. ZA1003200144985 dated 09.03.2020 passed by the Assistant Commissioner, States Taxes, Patna Central Circle, Patna for the period April 2019 to September 2019 whereby the assessment year in DRC 07 under Section 74 Bihar GST Act 2017 has been passed stating therein that suppression of turnover in the month of April 2019 to September 2019 were filed Nil turnover;

III. For issuance of writ in the nature of declaration holding that the assessment order issue vide respondent State Taxes Department is wholly misconceived arbitrary illegal and without jurisdiction for reason the petitioner being work contractor as admittedly paid the tax in advance to the Rural Works Department which out to have been transfer to State Taxes Department but the petitioner has been made liable for the same by imposing the huge penalty which is unjustified in the eyes of law:

IV. For issuance of writ in the nature of declaration holding that when the petitioner made agreement with Rural Works Department for the work of construction and repair the deduction was done under the Bihar Value Added Tax Act to midst GST act was introduced due to which rate of tax has been increased from 4% to 12% which is being recovered from the petitioner instead of Rural Works Department is wholly without jurisdiction;

V. For issuing writ of mandamus or any other appropriate writ order or direction to the Respondent No. 3 and Respondent No. 4 directing thereby to release/ reimburse the GST/differential amount which GST liability of the petitioner incurred by him towards the projects for which tenders were allotted to the petitioner and work orders were issued;

VI. For issuance of writ in the nature of mandamus directing the respondent Rural Works Department to transfer the amount of taxes which was paid by the petitioner to the State Taxes Department;

VII. For holding that the petitioner is entitle for reimbursement of GST which it has to paid towards the GST liability on the value of the services rendered by the petitioner in projects for which tenders were allotted to the petitioner and work orders were issued;

VIII. For issuing appropriate order to the Respondent and thereby directing the respondents to reimburse Rs.47,18,770.56/-, the GST amount (including the amount of Rs.9,96,658.92/-) which has not yet been discharged by the petitioner as his liability in FY 2019-20 and for which the respondent no. 7 was issued the demand order dated 09.03.2020 and levied Rs.99,033.34/- as interest and Rs.9,96,658.92/- as penalty) towards the project allotted to the petitioner by Respondent no. 3 and Respondent no. 4;

IX. For directing the respondents to pay appropriate interest on the amount which the petitioner is entitle as the reimbursement of amount relating to GST payments made by the petitioner was withheld by the Respondents for no justifiable reasons;

X. For directing the Respondents to pay interests accrued to the Petitioner on account of delayed payment of GST which Petitioner has paid/will pay to the GST Authorities;

XI. 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;

XII. For issuing writ of mandamus and thereby directing the Respondents to refund a sum of Rs.99,666/- (Rs.49,833.00/- (CGST); Rs. 49,833.00/- (SGST) for F.Y – 2019-20, which was deposited by the petitioner as ten percent of disputed tax amount as needed to be paid as pre-deposit (Section 107(6)(b) of Central Goods and Service Tax Act, 20117) before filing an appeal under CGST/ SGST for the aforesaid period i.e. F.Y-2019-20.

XIII. To any other relief/s to which the petitioner is found entitled to in facts and circumstances of the present case.”

Learned counsel for the petitioner submits that this case is squarely covered vide judgment and order dated 05.07.2019 passed in C.W.J.C. No. 1452 of 2019 titled as (M/s Jai Bhawani Construction Vs. The Union of India and Ors.) and analogous cases as well as letter No. 5405 dated 30.07.2019 issued by Engineer-in-Chief, pursuant to judgment and order as referred above.

Learned counsel for the State submits that he has no objection with the matter being remanded to the appropriate authority for consideration of petitioner’s case on its own merit in accordance with law.

Accordingly, we dispose of the present petition directing Respondent No.7, namely, The Engineer in Chief, Rural Works Department, Government of Bihar, Patna, to consider and decide the petitioner’s case in terms of judgment and order dated 05.07.2019 as referred above as well as letter No. 5405 dated 30.07.2019.

We clarify that all issues of facts and law are left open.

We hope and expect that Respondent No.7, namely, The Engineer in Chief, Rural Works Department, Government of Bihar, Patna, shall consider and decide the petitioner’s case expeditiously and preferably within a period of four months from the date of receipt/production of a copy of order passed by this Court.

The writ petition stands disposed of in aforesaid terms.

Interlocutory application(s), if any, also stands disposed of.

