(2022) 11 PAT CK 0048

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 14393 Of 2022

M/S Suraj Kumar — APPELLANT

Vs

Union Of India — RESPONDENT

Date of Decision : 16-11-2022

Acts Referred:

Citation : (2022) 11 PAT CK 0048

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

Bench : Division Bench?

Advocate : Alok Kumar, Amlesh Kumar, Arjun Kumar, Dr. K.N. Singh, Anshuman Singh, Devansh Shankar Singh, Sriram Krishna, Vikash Kumar

Final Decision : Disposed Of

Judgement

Heard learned counsel for the parties.

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

Petitioner has prayed for quashing of the impugned order dated 24.07.2021 passed by Respondent No. 5, namely, the Joint Commissioner, State Tax, Gandhi Maidan Circle, District- Patna in Reference No. ZA100721385641S (Annexure-1); Summary of the order in Form GST DRC-07 dated 08.12.2021 passed by the Assistant Commissioner of State Tax, Gandhi Maidan, West, Patna in Reference No. ZD101221006441H (Annexure-2) and the order dated 13.10.2022 passed by Respondent No. 4, namely, the Additional Commissioner of State Taxes (Appeals), Patna, West Division, Patna in Appeal Case No. GST/GM-12/2022-23 (Annexure-4), which has been dismissed on the ground of limitation. Both the orders were ex parte in nature.

In our considered view, the delay stands sufficiently explained on account of COVID-19 restrictions.

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. 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 to be ex parte in nature.

As such, we dispose of the present writ petition in the following mutually agreeable terms:

(a) We quash and set aside the impugned order dated 24.07.2021 passed by Respondent No. 5, namely, the Joint Commissioner, State Tax, Gandhi Maidan Circle, District- Patna in Reference No. ZA100721385641S (Annexure-1); Summary of the order in Form GST DRC-07 dated 08.12.2021 passed by the Assistant Commissioner of State Tax, Gandhi Maidan, West, Patna in Reference No. ZD101221006441H (Annexure-2) and the order dated 13.10.2022 passed by Respondent No. 4, namely, the Additional Commissioner of State Taxes (Appeals), Patna, West Division, Patna in Appeal Case No. GST/GM-12/2022-23 (Annexure-4);

(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 contentions 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 12th of December, 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. Also, opportunity to place on record all essential documents and materials, if so required and desired, shall be granted to the petitioner;

(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 be conducted through digital mode;

The instant petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, stands disposed of.

Learned counsel for the respondents undertakes to communicate the order to the appropriate authority through electronic mode.