(2022) 12 PAT CK 0064

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 17298 Of 2022

Pravin Kumar APPELLANT

Vs

State Of Bihar RESPONDENT

Date of Decision : 16-12-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 19(1)(g), 300A
Bihar Goods and Services Tax Rules, 2017 — Rule 61(5)
Central Goods and Services Tax Rules, 2017 — Rule 61(5)
Bihar Goods and Services Tax Act, 2017 — Section 16(1), 16(2), 16(4)
Central Goods and Services Tax Act, 2017 — Section 16(1), 16(2), 16(4)

Citation : (2022) 12 PAT CK 0064

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

Bench : Division Bench

Advocate : Parijat Saurav, Vikash Kumar

Final Decision : Disposed Of

Judgement

Petitioner has prayed for the following relief(s):

" i) For issuance of a writ in the nature of Certiorari or any other appropriate writ or order for quashing of order-in-appeal dated 29/06/2022 passed by the respondent no. 2, the Additional Commissioner of State Taxes (Appeal), Darbhanga Division, Darbhanga contained in Memo no. 206 dated 29/06/2022 whereby the appeal of the petitioner was dismissed, and further be pleased to quash the ex-parte assessment order-in-original dated 06/03/2020 and the order contained in Ref. No. ZA100320011461P dated 07/03/2020 passed under the signature of respondent no. 3 and the consequential demand notice contained in Form GST DRC-07 dated 07/03/2020 levying tax amounting to Rs. 1,31,66,796.00/- (Rs. One crore, thirty one lac, sixty six thousand, seven hundred and ninety six only) alongwith interest of Rs. 6,44,364.00/- (Rs. Six lac, forty four thousand, three hundred and sixty four only) and penalty of Rs. 13,16,680/- (Rs. Thirteen lac, sixteen thousand, six thousand and eighty only), totalling to Rs. 1,51,27,840/- (Rs. One crore, fifty one lac, twenty seven thousand, eight hundred and forty only) for the period April 2018 to March 2019 - Financial Year 2018-19, and further be pleased to direct the respondents to remove the attachment of the bank account of the petitioner.

ii) For issuance of an appropriate writ, order or direction for holding and declaring the Section 16(4) of the Central / Bihar Goods and Service Act, 2017 as ultra vires the provisions of Article 14, 19(1)(g) and 300A of the Constitution of India and also being violative of Section 16(1) and (2) and the basic structure of CGST/BGST Act, 2017.

iii) For issuance of an appropriate writ, order or direction for holding and declaring the Rule 61(5) of the Central / Bihar Goods and Service Rules, 2017 as amended by notification no. 49/2019 with retrospective date of 01.07.2017, as ultra vires the provisions of Article 14, 19(1)(g) and 300A of the Constitution of India and also being violative of Section 16(1) and (2) and the basic structure of CGST/BGST Act, 2017.

iv) In alternate be pleased to hold and declare that Section 16(4) of the CGST/ BGST Act, 2017 and amended Rule 61(5) of the CGST/BGST Rules, 2017 are not applicable in the case of the petitioner.

v) For issuance of any other appropriate writ, order or direction which Your Lordships may deem fit and proper in the facts and circumstances of the case."

It is brought to our notice that vide impugned order dated 29.06.2022 passed by the Respondent No. 2 namely the Additional Commissioner of State Taxes (Appeal), Darbhanga Division, Darbhanga, under Memo No.206, the appeal of the petitioner against the order dated 06.03.2020 passed by Respondent No. 3, namely The Assistant Commissioner of State Tax, Darbhanga Circle, Darbhanga, and summary of order dated 07.03.2020 in Form GST DRC-07 for the period April, 2018 to March, 2019, has been rejected in violation of principles of natural justice.

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 and the limitation shall not be allowed to come in the way. 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; (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 29.06.2022 passed by the Respondent No. 2 namely the Additional Commissioner of State Taxes (Appeal), Darbhanga Division, Darbhanga, under Memo No.206, the order dated 06.03.2020 passed by Respondent No. 3, namely The Assistant Commissioner of State Tax, Darbhanga Circle, Darbhanga, and summary of order dated 07.03.2020 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 Assessing Authority on 04.01.2023 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 be conducted through digital mode;

The instant petition sands 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.