

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9969 of 2022

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M/s Sri Krishna Sales Agency having office at Post Office GPO, Chistion Colony, Lodipur, Patna, Bihar-800001 through its proprietor Mr. Sanjiv Sahay, aged about 55 years, Male, son of Late Shankar Sahay, resident of Christion Colony, Lodipur, Patna, Bihar-800001.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary cum Commissioner, State Taxes, Government of Bihar, Vikash Bhawan, Bailey Road, Patna-800001.
2. The Commissioner of Central GST and Central Excise Patna-1, 3rd Floor, Kendriya Rajaswa Bhawan (Annexe Building), Bir Chand Patel Path, Patna-800001.
3. Additional Commissioner of State Tax (Appeal), Patna West Division, Patna.
4. The Deputy Commissioner of State Tax, Patna Central Division, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Alok Kumar, Advocate Mr. Rajeev Shekhar, Advocate
For the State	:	Mr. Vikash Kumar (SC11)
For the Union of India (CGST):		Dr. K.N. Singh, ASG Mr. Anshuman Singh, Sr. S.C. CGST & CX

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-07-2022

Petitioner has prayed for the following relief(s):

“i) To issue an appropriate writ, order or direction quashing the order of Appeal passed by the Additional Commissioner of State Tax (Appeal), Patna West Division, Patna (Annexure-3) to this Writ Application) under Section 107 of the Goods and Services Act, 2017 read with rule 108(3) Goods and Services



Rules, 2017 whereby the petitioner's Appeal has been dismissed on the ground of delay.

ii) To issue an appropriate writ, order or direction quashing the order of Assessment passed by Deputy Commissioner of State Tax, Patna Central Division, Patna, (Annexure-2 to this Writ Application) under Section 73 of the Bihar Goods and Services Act, 2017, Whereby the petitioner's has been assessed ex-parte in Violation of the Principal of Natural Justice.

lii) To issue direction to the authorities concern not to realize the amount from the HDFC bank account (Exhibition Road, Branch) located at Exhibition Road, Patna which has been seized in pursuance of the order of Assessment passed under section 73 of the Bihar Goods and Services Act, 2017.

iv) To grant any other relief or reliefs to which the petitioner is entitled in the facts and circumstances of the case."

It is brought to our notice that vide impugned order dated 17.03.2022 passed by the Respondent No. 3 namely the Additional Commissioner of State Tax (Appeal), Patna West Division, Patna, in Case No. ARN AD10022000793W, the appeal of the petitioner against the order dated 08.08.2019 passed by Respondent No. 4, namely The Deputy Commissioner of State Tax, Patna Central Division, Patna under Section 73 of BGST Act, 2017; has been rejected on the ground of the same being barred by



limitation.

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 17.03.2022 passed by the Respondent No. 3 namely the Additional Commissioner of State Tax (Appeal), Patna West Division, Patna, in Case No. ARN AD10022000793W, and the order dated 08.08.2019 passed by Respondent No. 4, namely The Deputy Commissioner of State Tax, Patna Central Division, Patna;

(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 29th of August, 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.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/DKS

AFR/NAFR	
CAV DATE	
Uploading Date	29.07.2022
Transmission Date	

