

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7187 of 2022

Rakesh Roshan a proprietary concern having its principal place of Business at Sangrampur Bazar, Sangrampur, Munger, Bihar, 813212 through its Proprietor Rakesh Roshan (Male) (aged about 45 years) son of Shri Om Prakash Bhagat resident of Bhawanipur, Sangrampur, District- Munger, Bihar, 813212.

... .. Petitioner/s

Versus

1. State of Bihar through Commissioner of State Tax, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Additional Commissioner of State Tax (Appeal), Bhagalpur Division, Bhagalpur.
3. Assistant Commissioner of State Tax, Munger Circle, Munger.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mrs.Manju Jha, Advocate
For the Respondent/s : Mr.Vivek Prasad (GP7)

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

Date : 17-05-2022

Petitioner has prayed for the following relief(s):

“i) the Notice dated 19.02.2020 under Section 74 of the Bihar Goods and Services Tax Act, 2017 (hereinafter called the Act) issued by respondent no. 3 raising demand of tax on the ground of excess claim of input tax credit for the period of 2018-19 be quashed.

ii) the order dated 21.03.2020 passed by the Adjudicating Authority for the demand of tax on the ground of excess amount of input tax



credit for the period 2018-19 be quashed.

iii) the order in Form GST DRC – 07 dated 21.03.2020 passed by the respondent no. 3 be quashed.

iv) the order dated 26.03.2022 passed by the respondent no. 2 for the period of 2018-19 dismissing the appeal be quashed.

v) the order in GST DRC – 13 dated 29.03.2022 issued by respondent no. 3 attaching the bank accounts for recovery of the whole of the amount of tax, interest and penalty in dispute be quashed.

vi) for further holding and a declaration that the case of the petitioner is squarely covered by the judgment dted 08.03.2021 in Suo Motu Writ Petition (Civil) No. 3 of 2020 by the Hon'ble Supreme Court of India for extension of Limitation due to COVID-19 pandemic.

vii) for granting any other relief(s) to which the petitioner is otherwise found entitled to.”

Petitioner has prayed for quashing of the notice dated 19.02.2020 issued by the Assistant Commissioner of State Tax, Munger Circle, Munger in Reference No. ZA100320020482K (Annexure- 3 series); order dated 21.03.2020, passed by the Assistant Commissioner of State Tax, Munger, Bhagalpur, Bihar in Reference No.



ZA100320020482K (Annexure- 3 series); summary of the order in Form GST DRC-07 dated 21.03.2020; order dated 26.03.2022 passed by Respondent No. 2, namely, the Additional Commissioner of State Tax (Appeal), Bhagalpur Division, Bhagalpur in Appeal No. AD100321002599M (Annexure-6); order in Form GST APL-04 dated 28.03.2022 [Order No. ZD100322014192D] and the order in Form GST DRC-13 dated 29.03.2022 and 30.03.2022, issued by Respondent No. 3, namely, the Assistant Commissioner of State Tax, Munger Circle, Munger (Annexure-7 series).

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 notice dated 19.02.2020 issued by the Assistant Commissioner of State Tax, Munger Circle, Munger in Reference No. ZA100320020482K (Annexure- 3 series); order dated 21.03.2020, passed by the Assistant Commissioner of State Tax, Munger, Bhagalpur, Bihar in Reference No. ZA100320020482K (Annexure- 3 series); summary of the



order in Form GST DRC-07 dated 21.03.2020; order dated 26.03.2022 passed by Respondent No. 2, namely, the Additional Commissioner of State Tax (Appeal), Bhagalpur Division, Bhagalpur in Appeal No. AD100321002599M (Annexure-6); order in Form GST APL-04 dated 28.03.2022 [Order No. ZD100322014192D] and the order in Form GST DRC-13 dated 29.03.2022 and 30.03.2022, issued by Respondent No. 3, namely, the Assistant Commissioner of State Tax, Munger Circle, Munger (Annexure-7 series);

(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 6th of June, 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, 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	18.05.2022
Transmission Date	

