IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5804 of 2020

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Bindeshwar Yadav Construction Pvt. Ltd. having its registered office at Hariraha Rustampur, P.S. Laukahi, District Madhubani through its authorised representative namely Rohit Kumar Yadav, male, aged about 48 years, son of Shri Bindeshwar Prasad Yadav, resident of Hariraha Rustampur, P.S. Laukahi, District-Madhubani.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Deputy Commissioner of State Taxes, Jhanjharpur Circle, Madhubani.
3. The Assistant Commissioner of State Taxes, Jhanjharpur Circle, Madhubani.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Gautam Kumar Kejriwal, Advocate
Mr. Atal Bihari Pandey, Advocate

For the Respondent/s : Mr.Vikash Kumar (SC 11)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-12-2020

Petitioner has prayed for the following relief(s):

> “a) For issuance of a writ in the nature of certiorari for quashing of the letter bearing ref. no. 3889 dated 09.02.2020 issued by the respondent number 3 whereby an instruction under section 79 of the Bihar goods and services tax act 2017 (hereinafter referred to as the act

for short) has been issued upon concerned employer department to withhold/remit a sum of Rs. 23,22,713/- on account of the petitioner without any such liability of tax being due and pending against the petitioner?

b) For holding and a declaration that the issuance of the impugned letter/notice under section 79 of the act is absolutedly misconceived, illegal and without jurisdiction and as such deserves to be quashed by this Hon'ble Court;

c) For further issuance of necessary writ, order or direction restraining the respondent number 3 from enforcing the said impugned letter/notice bearing ref. no. 905 dated 09.02.2020 issued under section 79 of the act against the petitioner;

d) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case."

The order dated 07.08.2019, passed by Respondent No. 3, namely the Assistant Commissioner of State Taxes, Jhanjharpur Circle, Madhubani, in our considered view, suffers from the vice of principles of natural justice on three counts: (a) it does not assign any reason; (b) no adequate opportunity of hearing was afforded to the petitioner; (c) the resultant effect being the petitioner liable to suffer civil and penal consequences.

It has come on record that with the initiation of proceedings, petitioner was notified vide E-mail. It stands explained that the petitioner was not in the know of such E-mail as the same was being handled by a person who quit his services and never informed him of the proceedings. That apart, we notice that the notice sent by E.mail was for listing of a matter for particular date, but on subsequent dates, when the matter was taken up it was simply adjourned without fixing any date for appearance and no fresh notice for hearing on a subsequent date was ever issued to the petitioner.

Also what is the basis for determining the amount due and payable by the petitioner, amounting to more than Rs.20,00,000/- is not decipherable from the order-sheet or the record. Non-payment thereof entails civil and penal consequences.

As such, on this short ground alone, the impugned order dated 07.08.2019 is quashed and set aside with the direction to Respondent No. 3, namely The Assistant Commissioner of State Taxes, Jhanjharpur Circle, Madhubani to consider and decide the matter afresh by a speaking order, assigning reasons and affording adequate opportunity of hearing to the petitioner.

Petitioner is directed to appear before the concerned authority on 15.01.2021.

The proceedings, during the time of current Pandemic- Covid-19 shall be conducted through digital mode, unless the parties otherwise mutually agree to meet in person i.e. physical mode.

Equally, liberty is reserved to the petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law.

We are hopeful that as and when petitioner takes recourse to such remedies, as are otherwise available in law, before the appropriate forum, the same shall be dealt with, in accordance with law and with reasonable dispatch.

Liberty reserved to the petitioner to approach the Court, if the need so arises subsequently on the same and subsequent cause of action.

We have not expressed any opinion on merits.

The petition stands disposed of in the aforesaid terms.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

DKS/-

AFR/NAFR	
CAV DATE	
Uploading Date	21.12.2020
Transmission Date	