IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7092 of 2021

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M/s Royal Enterprises, having its registered office at Jagarnath Pur, Nand Lal Pur, Kahalgaon, P.S. Kahalgaon, District Bhagalpur, Bihar through its Site Incharge, Satyendra Narayan Dwivedi, aged about 40 years, Male, son of Sri Sarbanand Dwivedi, resident of Village Dihari, P. Hajipur, Paschim, P.S. Sahebganj (Muffasil), District Sahebganj, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
2. The State Tax Commissioner cum Secretary, Commercial Tax Department, Government of Bihar, Patna.
3. The Joint Commissioner, State Tax, Commercial Tax Department, Bhagalpur Circle, District-Bhagalpur, Bihar.
4. The Assistant Commissioner of State Tax, Bhagalpur Circle, District-Bhagalpur, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Prabhat Ranjan, 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)

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/Hon'ble Judges through Video Conferencing from their residential offices/residences. Also the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 24-06-2021

Petitioner has prayed for the following relief(s):

"(i) Commanding upon the Respondents to withdraw the Assessment order bearing Reference No. ACST422 dated 17.08.2019 (Annexure 3) issued under Section 62 (1) of the

Bihar Goods and Services Tax Act, 2017 in as much as a valid return along with the requisite taxes for the month of February, 2019 has already been filed;

(ii) Commanding upon the Respondents to withdraw the consequential Composite Notice to Third Person dated 09.02.2020 (contained in Form GST DRC 13) issued under Section 79 (1) (c) of the Bihar Goods and Services Tax Act, 2017 (Annexure 5) by which the N.T.P.C. Ltd. has been directed to remit a sum of Rs. 73,60,222.00 pursuant to the Assessment order dated 17.08.2019 under Section 62 (1) of the Act,

(iii) Restraining the Respondents from taking any coercive penal action in furtherance of the Assessment order bearing Reference No. ACST422 dated 17.08.2019 (Annexure 3) during the pendency of the present Writ petition for the reason that a valid return has already been filed and requisite taxes have already been deposited.

It is brought to our notice that post passing of the impugned order dated 17th of September, 2019, consequential composite notice to third person dated 09.02.2020(contained in Form GST DRC-13) has been issued under Section 79(1)(c) of Bihar Goods and Service Tax Act, 2017 vide Reference No. ACST422 dated 17.08.2019.

According to the Revenue, petitioner has an equally alternative efficacious remedy of filing an appeal under the provisions of the Bihar Goods and Service Tax Act, 2017.

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. 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 17th of September, 2019, consequential composite notice to third person dated 09.02.2020 (contained in Form GST DRC-13) has been issued under Section 79(1)(c) of Bihar Goods and Service Tax Act, 2017 vide Reference No. ACST422 dated 17.08.2019;

(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 9th of August, 2021 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) Liberty reserved to the petitioner to challenge the order, if required and desired;

(n) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(o) 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;

(p) We have not expressed any opinion on merits and all issues are left open;

(q) If possible, proceedings during the time of current Pandemic [Covid-19] 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.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	07.07.2021
Transmission Date	