IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7297 of 2021

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M/s Vaishali Chemicals having its registered Office at Industrial Area, Harpur Alloth, Samastipur, Bihar-848101, through its Partner Mr. Suresh Pandey, Male aged 50 Years, Son of Late V. N Pandey, resident of House No. E 136A, Luxmi Park, Nagloi, P.S. Nagloi, Delhi-110041

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner, State Taxes, Government of Bihar, Patna.
2. The Commissioner, State Taxes, Bihar, Patna.
3. The Joint Commissioner of State Taxes, Samastipur Circle, Distirct-Samastipur.
4. The Assistant Commissioner of State Taxes, Samastipur Circle, District-Samastipur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Satyabir Bharti, Advocate Ms. Prachi Pallavi, 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 : 30-06-2021

Petitioner has prayed for the following relief(s):

> (i) Issuance of a writ of certiorari or any other appropriate writ, order or direction, quashing the impugned order dated 08.03.2020 (Annexure-5, page 31), passed under Section 73(9) of the Bihar Goods and Service Tax Act, 2017, by which the respondent no.4,

namely the Assistant Commissioner of State Taxes, Samastipur Circle, District Samastipur, without considering the replies filed by the petitioner and disagreeing with the cause shown by the petitioner, in pursuance to the notice under Section 61 and Section 73(2) of the Act, a demand order determining a liability of a total sum of Rs. 3,65,025.15 has been fastened upon the petitioner for the FY 2018-19;

(ii) To direct the respondents to pass a fresh order upon considering the reply of the petitioner in compliance to notices issued under Section 61 and Section 73(2) of the Bihar Goods and Service Tax Act, 2017;

(iii) To direct the respondents not to take any coercive action against the petitioner till the pendency of the present writ application;

(iv) Issuance of any other writ(s), order(s), or direction(s) as may be deemed fit and proper by this Hon’ble Court.

It is brought to our notice that vide impugned order dated 08.03.2020 passed by the Respondent No. 2 namely the Assistant Commissioner of State Taxes, Samastipur Circle, Samastipur under Section 73(9) of Bihar Goods and Service Tax Act, 2017 passed in GSTIN-10AALFC2179F1ZS for the period April 2018 to March 2019 by which Respondent No. 4 without considering the replies filed by the petitioner and disagreeing with the cause shown by the petitioner, in pursuance of the notice under Section 61 and Section 73(2) of the Act, a demand order determining a liability of a total sum of Rs.3,65,025.15 has been fastened upon the petitioner for the FY 2018-19.

Learned counsel for the Revenue, states that he has no objection if the matter is remanded to the Appellate 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 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 08.03.2020 passed by the Respondent No. 4 namely the Assistant Commissioner of State Taxes, Samastipur Circle, Samastipur under Section 73(9) of Bihar Goods and Service Tax Act, 2019 passed in GSTIN-10AALFC22179F1ZS;

(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	