IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7913 of 2021

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Singh Caterers and Vendors, Kunwar House, Road No. 11, Rajendra Nagar, PS- Kadamkuan, Patna-16 a partnership firm through its partner Rakesh Singh, Make, Aged about 46 years, son of late Kunwar Ranbeer Singh, Resident of Kunwar House, Road No. 11, Rajendra Nagar, PS- Kadamkuan, Patna-16

... ... Petitioner/s

Versus

1. The State of Bihar through the Joint Commissioner of State Tax, Kadamkuan Circle, Patna.
2. Joint Commissioner of State Tax, Kadamkuan Circle, Patna.
3. Indian Bank, Patna Main Branch, Opposite Kotwali, P.S.- Patna through the Branch Manager
4. The Branch Manager, Indian Bank, Patna Main Branch, Opposite Kotwali, P.S.- Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Arvind Kumar, Advocate

For the Respondent/s : Mr.Vivek Prasad, GP-7

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

Date : 01-07-2021

Petitioner has prayed for the following relief(s):

> "(i) For issuance of writ in the nature of mandamus for directing the Respondent No. 2 to consider the case of the Petitioner for rectification of errors apparent on the face of the record under Section 161 of the Bihar Goods and Services Tax Act, 2017 (herein after to be referred as The Act).
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> (ii) For issuance of writ in the nature of certiorari for

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quashing of notice dated 01.03.2021 issued under Section 79 of the Act to the Indian Bank for attaching the account of the petitioner for payment of Rs. 1,46,88,724/-

(iii) For any other consequential relief/reliefs for which the petitioner is entitle by this Hon'ble Court in the facts and circumstances of the present case."

It is brought to our notice that vide impugned order dated 01.03.2021 passed by the Respondent No. 2 namely the Joint Commissioner of State Tax, Kadam Kuan Circle, Patna under Memo No. 879A dated 01.03.2021, whereby notice under Section 79 of the Bihar Goods and Service Tax Act, 1917 has been issued to the Indian Bank for attaching the account of the petitioner for payment of Rs. 1,46,88,724/- .

Having heard learned counsel for the parties, we are of the considered view that the issue would be best resolved, with the consideration of the petitioner's application filed under Section 161 of the Bihar Goods and Service Tax Act, 1917 in accordance with law.

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.

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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 01.03.2021 passed by the Respondent No. 2 namely the Joint Commissioner of State Tax, Kadam Kuan Circle, Patna under Memo No. 879A dated 01.03.2021;

(b) We accept the statement of the petitioner that ten per cent of the total amount, being condition prerequisite for

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hearing of the case, 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) Also we request the authority to ascertain the opinion from the respective stake holders, if possible and

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decide the same within three months.

(h) The Assessing Authority shall decide the case on merits after complying with the principles of natural justice;

(i) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

(j) During pendency of the case, no coercive steps shall be taken against the petitioner.

(k) The Assessing Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(l) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(m) 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;

(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;

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(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 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/-

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Uploading Date	07.07.2021
Transmission Date	

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