

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 9243 of 2021

Sushil alias Susheel Kumar Chaudhari male aged about 51 years-son of
Nandlal Chaudhari resident of Ward No. 6, Jhajhihat Bazar Pupari, Near Central
Bank, Pupari, P.S.- Pupari, District – Sitamarhi - 843320. Petitioner

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner,
Department of State Taxes, Government of Bihar, Patna.

2. The Joint Commissioner of State Taxes, Sitamarhi Circle, Sitamarhi.

3. The Assistant Commissioner of State Taxes, Sitamarhi Circle, Sitamarhi.

..... Respondents

Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
Mr. Alok Kumar Jha, Advocate

For the Respondent/s : Mr. Vivek Prasad, G.P. 7

For the Union of India : Dr. K.N.Singh, A.S.G.
Mr. Anshuman Singh, Sr. S.C., CGST & CX

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 : 01-07-2021

Our attention is invited to the Circular dated 11th



of August, 2020, issued by the Government of India, Ministry of Finance, Department of Revenue (State Taxes-I Section), and Circular dated 27th of October, 2020, issued by the Government of India, Ministry of Finance, Department of Revenue (Central Board of Indirect taxes & Customs) Legal Cell, copy whereof is taken on record.

In view of the same, Union of India be impleaded as Party Respondent No. 4.

Registry to make necessary correction, both on the digital as also the hard file.

Dr. K.N. Singh, learned Additional Solicitor General and Shri Anshuman Singh, Sr. S.C., CGST & CX enter appearance on behalf of the newly added respondents.

Petitioner has prayed for the following relief(s):



- a) For issuance of a writ in the nature of certiorari for quashing of the ex parte order dated 13.03.2020 and summary of order in form GST DRC – 07 dated 13.03.2020 under rule 142 (5) of the Bihar Goods And Services Tax Rules 2017 (hereinafter referred to as the “Bihar rules 2017” for short) passed and it should be by the respondent number 3 under section 74 (1) of the Bihar Goods And Service Tax Act, 2017 (hereinafter referred to as the “Bihar act 2017” for short);
- b) For holding on a declaration that the impugned order dated 13.03.2020 passed by the respondent No. 3 is highly cryptic, nonspeaking and based on complete nonapplication of mind to the figures mentioned and admitted in the returns for the period of July 2019 to September 2019 already filed by the petitioner much before the impugned order was passed;
- c) For issuance of a writ or order or direction holding the action of the respondent number 3 already taken in terms of section 79 (1) (c) of the Bihar act 2017 for recovery of the amount of tax, interest and penalty imposed in terms of the order dated 13.03.2020 being illegal and without jurisdiction as it is not preceded by due compliance of the condition mandated in the proviso to section 78 of the Bihar act 2017;
- d) For issuance of a writ or order or direction restraining the respondent No. 3 from making any coercive recovery of the amount in demand (tax, interest and penalty) as contained in the order dated 13.03.2020 during the pendency of the present writ application;
- e) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case.

Petitioner has filed the instant petition for quashing the impugned order dated 13th of March, 2020 (Annexure-5/A) passed by Respondent No. 3 namely The Assistant Commissioner of State Taxes, Sitamarhi Circle, Sitamarhi



in Reference No. ZA100320016465C as also the Summary of order in Form GST DRC-07 dated 13th of March, 2020, claiming the said order to be *ex parte* in nature.

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 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 13th of March, 2020 (Annexure-5/A) passed by Respondent No. 3 namely The Assistant Commissioner of State Taxes, Sitamarhi Circle, Sitamarhi in Reference No. ZA100320016465C as also the Summary of order in Form GST DRC-07 dated 13th of March, 2020;

(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 stands 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)

Sujit/PKP-

AFR/NAFR	
CAV DATE	
Uploading Date	06.07.2021
Transmission Date	

