# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Civil Writ Jurisdiction Case No.10045 of 2021**

======================================================

M/s EFTI Construction having its place of business at Dipahi, Chiraiya, Motihari, East Champaran- 845315 through its proprietor namely Dabir Alam male aged about 44 years, son of Md. Waliullah, Resident of Dipahi, Chiraiya, Motihari, East Champaran- 845315

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeals) Tirhut Division, Muzzafarpur.
3. The Assistant Commissioner of State Taxes, Motihari Circle, Motihari. (October 2018 to March 2019)

... ... Respondent/s

======================================================

**Appearance :**

| | | |
|---|---|---|
| For the Petitioner/s | : | Mr. Gautam Kumar Kejriwal, Advocate<br>Mr. Alok Kumar Jha, Advocate |
| For the Respondent/s | : | Mr. Vikash Kumar, SC-11 |

======================================================

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

ORAL ORDER

**(Per: HONOURABLE THE CHIEF JUSTICE)**

2 29-07-2021

We are informed that vide judgment dated 08.07.2021 passed by this Court in the instant petition, the petition was disposed of with a direction to the petitioner to appear before the Assessing Authority. However, inadvertently, another order has been typed with a direction to the petitioner to appear before the Appellate Authority, which needs to be modified.

Having gone through the record, we recall the order dated 08.07.2021 passed in the instant case.

The following order be treated to have been passed in the instant case on the said date:-

"Petitioner has prayed for the following relief(s):-

"a) For issuance of a writ in the nature of certiorari for quashing of the summary of order in form GST DRC -07 dated 03.03.2020 passed and issued 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 further quashing of the impugned order passed by the respondent number 2 issued in form GST appeal -02 dated 28.12.2020 whereby the appeal preferred by the petitioner against the order dated 03.03.2020 has been rejected on technical grounds of non production of certified copy of the said order;

c) For holding and a declaration that the impugned order dated 03.03.2020 passed by the respondent No. 3 is highly cryptic, misconceived, nonspeaking and based on complete non-application of mind to the facts that the liability of tax and interest had already been discharged by the petitioner before the impugned order determining such liability was passed on 03.03.2020;

d) For holding and a declaration that once the petitioner had already discharged the liability of tax and interest for the period of October 2018 to March 2019, no repetition of such demand would be made from the petitioner in so far as tax is concerned;

(e) For further holding and a declaration that once the petitioner had already discharged the liability of interest for the said period, no liability of interest could be repeated vide impugned order dated 03.03.2020:

(f) 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 03.03.2020 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.

(g) 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 03.03.2020 during the pendency of the present writ application;

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

It is brought to our notice that vide impugned order dated 28th of December, 2020, in Form GST APL-02, passed by the Respondent No. 2 namely Additional Commissioner of State Taxes (Appeals) Tirhut Division, Muzaffarpur, in Reference No. ZD1012200266172 [GSTIN/Temp ID/UIN 10BFSPA2899M1Z1] (Annexure-5), the appeal of the petitioner against the order dated 03.03.2020 passed by the Respondent No. 3 namely the Assistant Commissioner of State Taxes, Motihari Circle, Motihari, in Reference No. ZA100320002704K (Annexure-2) and Summary of Order dated 03.03.2020 in Form GST DRC-07 has been rejected merely on the grounds of non-receipt of certified copies. Both the orders were *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 28th of December, 2020, in Form GST APL-02, passed by the Respondent No. 2 namely Additional Commissioner of State Taxes (Appeals) Tirhut Division, Muzaffarpur, in Reference No. ZD1012200266172 [GSTIN/Temp ID/UIN 10BFSPA2899M1Z1] (Annexure-5) and the order dated 03.03.2020 passed by the Respondent No. 3 namely the Assistant Commissioner of State Taxes, Motihari Circle, Motihari, in Reference No. ZA100320002704K (Annexure-2) and Summary of Order dated 03.03.2020 in Form GST DRC-07;

(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 16th 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) The Assessing Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

(o) Liberty reserved to the petitioner to challenge the order, if required and desired;

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

(q) 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;

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

(s) 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.

To the above extent, judgment dated 08.07.2021 passed in the instant petition is modified.

Let a copy of this order be kept, both on the digital as also the hard file.

**(Sanjay Karol, CJ)**

**( S. Kumar, J)**

P.K.P./Amrendra

| | | | |
|---|---|---|---|
| **U** | | | |