IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 8695 of 2021

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Star India Construction Pvt. Ltd. through Director Basant Kumar, Aged about - 44 years, Gender -male, son of Manoranjan Prasad, Resident of flat number -501, Road no. 13B, Narayan Vihar Apartment, Rajendra Nagar, Rajendra Nagar, Patna, Bihar -800018.

---------------------------- Petitioner

VERSUS

1. The State of Bihar through the Commissioner of commercial taxes Bihar, New Secretariat Patna
2. The Joint Commissioner of Commercial Taxes Bihar (Bihar goods and services tax), Central Circle, Patna
3. The Assistant Commissioner of commercial taxes, Patna Special Circle second floor, Kautilya Bhawan, Patna

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Appearance :

For the Petitioner/s	:	Mrs. Archana Sinha, Advocate
		Mr. Alok Kumar, 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

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

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(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 11^{th} 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):

(i) For directing the authorities to release the bank accounts of the petitioner HDFC bank account number - 50200010448578, exhibition road, Patna and SBI bank account number-30908002522 which was seized on 26. 02. 2021.

(ii) For quashing of Appeal Order passed by Joint Commissioner of Commercial Taxes(GST) dated 14.3.2021.

(iii) For quashing of order dated 4.3.2020 by which the respondent / Assessing Officer has passed the exparty order .

(iv) For refund of the amount which was withdrawn/seized by the authorities illegally from the bank account of the petitioner.

(v) For any other consequential relief or reliefs for which the petitioner is found entitled during course of hearing of this writ petition.

It is brought to our notice that vide impugned order 14th of March, 2021 passed by Additional Commissioner (Appeal), State Tax, Central Division, Patna in Appeal Case No. AD100321002140H, appeal preferred by the petitioner against the order dated 4th of March, 2020 passed by Assistant Commissioner, Office Patna Special Circle, Patna in case ID AD100220002756W, stands dismissed. 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, 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 14th of March, 2021 passed by Additional Commissioner (Appeal), State Tax, Central Division, Patna in Appeal Case No. AD100321002140H and the order dated 4th of March, 2020 passed by Assistant Commissioner, Office Patna Special Circle, Patna in case ID AD100220002756W;

(b) We accept the statement of the petitioner that 10 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 within a period of seven days from the date of account being made operational;

(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 a period of seven days from the date of account being made operational.

(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) In this view of the matter, 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 Officer on 9th of August, 2021 at 10:30 A.M., if possible through digital mode;

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

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

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

(j) The Assessing Officer shall decide the matter on merits expeditiously, preferably within a period of two months from the date of appearance of the petitioner;

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

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

(m) 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;

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

(o) 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)

Sujit/PKP-

AFR/NAFR	
CAV DATE	
Uploading Date	06.07.2021
Transmission Date	