IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9115 of 2021

Om Shanti Construction a proprietory concern having its office at Kameshwari Vihar, Ramna, Sadpura, Muzaffarpur, Bihar through its Proprietor, Vimal Kant Jha (Male) (Aged about 53 years), Son of Late Ram Chandra Jha, Resident of Kameshwari Vihar, P.O. Ramna, Kaji Mohammadpur, Sadpura, Muzaffarpur, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of State Tax, having its office at Vikas Bhawan, Bailey Road, Patna.
2. Dy. Commissioner of State Tax, East Circle, Muzaffarpur.
3. Asst. Commissioner of State Tax, East Circle, Muzaffarpur.
4. The Union of India New Delhi.

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr.D.V.Pathy, Advocate
Ms. Manju Jha, Advocate

For the Respondent/s : Mr. Vikash Kumar, SC-11

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 : 01-09-2021

Petitioner has prayed for the following relief(s):

i) the show cause notice dated 09.12.2020 (as contained in Annexure -2) issued by the respondent no.2 proposing levy of tax, interest and penalty be quashed.

ii) the summary of order dated 11.01.2021 (as contained in Annexure -5) issue by the respondent no.2 quantifying tax, interest and penalty be quashed.

iii) the ex parte order dated 11.01.2021 (as contained in Annexure -4) passed by the respondent no.2 imposing tax, interest and penalty without assigning any reasons therefor being contrary to the settled principles of natural justice and fair play in action being wholly illegal and without jurisdiction be quashed.

iv) the demand order dated 11.01.2021 (as contained in Annexure -6) issued under section 74 (9) of the Act be quashed.

v) for granting any other relief (s) to which the petitioner is otherwise found entitled to.

The instant petition has been filed for quashing of the order dated 11.01.2021 (as contained in Annexure-4) in GSTIN/ID : 10AMRPJ9585G1ZN, the summary of order dated 11.02.2021 (as contained in Annexure-5) in GST DRC-07 (Reference No. : ZD1001210096249), the demand order dated 11.01.2021 (as contained in Annexure-6) for the period 2019-20 and the show cause notice dated 09.12.2020 (as contained in Annexure-2) passed by Respondent No.3, the Assistant Commissioner of State

Tax, East Circle, Muzaffarpur. 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

11.01.2021 (as contained in Annexure-4) in GSTIN/ID : 10AMRPJ9585G1ZN, the summary of order dated 11.02.2021 (as contained in Annexure-5) in GST DRC-07 (Reference No. : ZD1001210096249), the demand order dated 11.01.2021 (as contained in Annexure-6) for the period 2019-20 and the show cause notice dated 09.12.2020 (as contained in Annexure-2) passed by Respondent No.3, the Assistant Commissioner of State Tax, East Circle, Muzaffarpur:

(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 11th of October, 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;

(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;

(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)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	06.09.2021
Transmission Date	