IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10007 of 2021

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Nabi Ishrat Security Agency A- 46 Alinagar, Anisabad, P.S. - Gardanibagh, District- Patna - 800002, represented through its Proprietor Ishrat Nabi, aged about 56 years, Male, son of Sharfun Nabi, Resident of - House No. A/46, Alinagar, Anisabad, P.S. - Anisabad, Patna - 800002.

... ... Petitioner/s

Versus

1. The Union of India through the Principal Chief Commissioner of Central Tax, Government of India, New Delhi.
2. The Principal Commissioner of Central tax, Government of India, New Delhi.
3. The Commissioner Central Tax, Government of India, New Delhi.
4. The State of Bihar through the Principal Chief Commissioner, State Tax, Bihar, Patna.
5. The Chief Commissioner, State Tax, Bihar, Patna.
6. The Joint Commissioner of State Taxes, Danapur Circle, Danapur.
7. The Deputy Commissioner of State Taxes, Danapur Circle, Danapur.
8. The Director, National Institute of Fashion Technology, Mithapur, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar, Advocate
For the Respondent/s	:	Mr. Dr. K.N. Singh, ASG
		Mr. Anshuman Singh, SR. S.C. CGST & CX
For the State	:	Mr. P.N. Shahi, AAG-6

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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.)

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Date : 23-09-2021

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

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i. For setting aside the assessment order as contained in Reference No. 609 dated 26.08.2019, passed by the Joint Commissioner, State Taxes, Danapur Circle, Danapur, whereby the CGST (Central Goods and Services Tax) and SGST (State Goods and Services Tax) for the month of April, May and June were calculated as Rs. 5,21,092/-, which is completely without jurisdiction as the Tax was payable under The Reverse Charge Mechanism (RCM) and which was duly paid by the National Institute of Fashion Technology, Patna (NIFT) accepting its liability.

ii. For setting aside the final order passed by the Joint Commissioner, State Taxes, Danapur Circle, Danapur, as contained in Process No. 635 dated 28.02.2019, whereby total tax for the month of April, May and June were affirmed as Rs. 5,21,092/- and direction was issued to issue DRC-07 in spite of the fact the petitioner was not at all liable to pay tax, rather the tax was payable by NIFT, Patna under Reverse Charge Mechanism (RCM) and the NIFT duly paid the same.

iii. For setting aside the DRC- 07 issued with the signature of Joint Commissioner, State Taxes, Danapur Circle, Danapur with regard to CGST of Rs. 2,60,545/- and SGST of Rs. 2,60,545/-.

iv. For issuance of direction to the respondents authorities to repay the entire amount of Tax, Penalty and interest of Rs. 5,21,092/-, which the petitioner paid under compulsion in spite of the fact, the petitioner did not liability to pay the same and further the said amount of tax, interest and penalty has already been paid by NIFT, Patna accepting its liability under RCM. The petitioner also deserve interest on the said amount.

v. For any other relief for which the petitioner may be deemed entitled to.

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Petitioner has prayed for quashing of the impugned order dated 26.08.2019 passed by Respondent No. 6 namely Joint Commissioner, State Taxes, Danapur Circle, Danapur in

Reference No. 609 (Annexure-3) and the order dated 28.08.2019, passed by respondent no. 6, Joint Commissioner, State Taxes, Danapur Circle, Danapur, in Process No. 635, (Annexure-4).

Shri Ranjeet Kumar, learned counsel for the petitioner states that 100 per cent of the amount in question stands deposited not only by the petitioner but also the third party.

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 26.08.2019 passed by the Respondent No. 6 namely Joint Commissioner, State Taxes, Danapur Circle, Danapur in Reference No. 609 (Annexure-3) as also the order dated 28.08.2019, passed by respondent no. 6, Joint Commissioner, State Taxes, Danapur Circle, Danapur, in Process No. 635, (Annexure-4);

(b) The deposit already made 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;

(c) 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.

(d) Petitioner undertakes to appear before the Assessing Authority on 11th of October, 2021 at 10:30 A.M., if possible through digital mode;

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

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

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

(h) The Assessing Authority 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 Authority shall decide the case on merits expeditiously, preferably within a period of two months from the date of appearance of the petitioner;

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

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

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

(n) 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;

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

(p) 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)

P.K.P./Amrendra

AFR/NAFR	
CAV DATE	
Uploading Date	29.09.2021
Transmission Date	