IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11354 of 2021

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M/s Shiv Enterprises, Muzaffarpur through its sole proprietor Shashi Ranjan male aged 51 years son of Kalanand Singh, Resident of Mohalla Gobarsahi, P.S. Kazi Mohammadpur, District Muzaffarpur.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Finance, New Delhi.
2. The Secretary, Goods and Services Tax Council, New Delhi.
3. The Central Board of Direct Taxes and Customs through its Chairman, Department of Revenue, North Block, New Delhi.
4. The Chief Commissioner of Central Taxes, Revenue Bldg., Patna.
5. The Commissioner of State Taxes, Vikas Bhavan, Patna.
6. The Joint Commissioner, State Tax, Western Block, Muzaffarpur.
7. The Additional Commissioner, State Tax, Muzaffarpur.
8. The Branch Manager, Bank of Baroda, Muzaffarpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Amarendra Nath Verma, Advocate
		Mr. Kirti Ranjan, Advocate
For the State	:	Mr. Vivek Prasad, GP-7
For the UoI	:	Mr. (Dr.) K. N. Singh, ASG
		Mr. Anshuman Singh, Sr. SC, CGST & CX

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

Date : 22-07-2021

Petitioner has prayed for the following relief(s):

"That the present application is being filed

> for issuance of a writ in the nature of certiorari setting aside the order dated 08.02.2020 passed by the Joint Commissioner (Incharge), State Tax, Muzaffarpur (Annexure-P/4) rejecting the petitioner's claim for input tax concession ITC on the sole ground that from TRAN-1 was filed on 05.11.2019 in place of 20.10.2019; the appellate order dt. 28.12.2020 mechanically confirming it by the Additional Commissioner, State Tax, Muzaffarpur (Annexure-P/5) only because the certified copy of the order could not be enclosed even as a photocopy of its certified copy had already been uploaded and also the consequential order freezing the petitioner's current bank account recently on 11.01.2021 (Annexure-P/6) even as no orders were ever communicated to the proprietor of the petitioner – firm whose only son died of lung-cancer after a prolonged treatment at Tata Memorial Hospital, Mumbai at the relevant time and his wife is still in a precarious health conditions out of the acute mental shock."

It is brought to our notice that vide impugned order dated 28.12.2020 passed by the Respondent No. 7 namely Additional Commissioner State Tax, Muzaffarpur in Form GST APL-02 (Reference No. ZD101220026894W), the appeal of the petitioner against the order dated 08.02.2020 passed by the Respondent No. 6 namely Joint Commissioner State Tax, Muzaffarpur, in GSTIN-10AGIPR9377F1Z5 has been rejected. 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

28.12.2020 passed by the Respondent No. 7 namely Additional Commissioner State Tax, Muzaffarpur in Form GST APL-02 (Reference No. ZD101220026894W) and the order dated 08.02.2020 passed by the Respondent No. 6 namely Joint Commissioner State Tax, Muzaffarpur, in GSTIN-10AGIPR9377F1Z5;

(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 3rd of September, 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	
Transmission Date	