IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13386 of 2021

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Shrimohan Mishra Son of Shiv Shankar Mishra Resident of Village and Post Office- Kaithwar, Police Station- Sakatpur, Circle- Tardih, District- Darbhanga, Pin.- 847204.

... ... Petitioner/s

Versus

1. The State of Bihar Through its Chief Secretary, Bihar, Patna.
2. The Principal Secretary Department of Commercial Tax, Government of Bihar, Patna.
3. The Commissioner Commercial Tax, Government of Bihar, Patna.
4. The Joint Commissioner Commercial Tax Department, Darbhanga Circle, Darbhanga.
5. The Deputy Commissioner Commercial Tax, Darbhanga Circle, Darbhanga.
6. The Collector Darbhanga, District- Darbhanga.
7. The Circle Officer Tardih, Darbhanga.
8. The Certificate Officer Mines and Mineral Department, Collectorate Darbhanga.
9. The Secretary Department of Mines and Minerals, Government of Bihar, Patna.
10. The Assistant Mines Officer Darbhanga.
11. The Inspector Mines Department, Darbhanga.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Kaushalesh Choudhary, Advocate
For the Respondent/s	:	Mr.Vikash Kumar, SC-11

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

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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 : 04-08-2021

Petitioner has prayed for the following relief(s):

i. For issuance of appropriate Writ / Writs/, Rule/ Rules/, Direction/Directions in the nature of mandamus commanding the concerned respondents for quashing the Process No. 4831, dated 22.12.2020, issued by the Joint Commissioner(I/c), Commercial Tax Department, Darbhaga Circle, Darbhanga, by which the petitioner has been directed to deposit a sum of Rs. 2,90,000/-, stating the same as dues with the petitioner, as VAT tax, for the year 2013-2014.

ii. For quashing the Process No. 4856, dated 22.12.2020, issued by the Joint Commissioner(I/c), Commercial Tax Department, Darbhaga Circle, Darbhanga, by which the petitioner has been directed to deposit a sum of Rs. 1,80,000/-, stating the same as dues with the petitioner, as VAT Tax, for the year 2013-2014.

iii. For quashing the Process No. 4869, dated 22.12.2020, issued by the Joint Commissioner(I/c), Commercial Tax Department, Darbhaga Circle, Darbhanga, by which the petitioner has been directed to deposit a sum of Rs. 2,44,500/-, stating the same as dues with the petitioner, as VAT Tax, for the year 2014-2015.

iv. For quashing the Process No. 4886, dated 22.12.2020, issued by the Joint Commissioner(I/c), Commercial Tax Department, Darbhaga Circle, Darbhanga, by which the petitioner has been directed to deposit a sum of Rs. 1,80,000/-, stating the same as dues with the petitioner, as VAT Tax, for the year 2014-2015.

v. For quashing the Proceedings under, Certificate Case No. 106 of 2015-16, pending against the petitioner, for recovery of the aforementioned amounts.

vi. For quashing the entire proceeding initiated against the petitioner, vide Case Nos. 28(1) 351/2015-16, 28(1) 352/2015-16, 31(1) 375/2015-16 and 31(1) 376 of 2015-16, pending in the office of the Deputy Commissioner, Commercial Taxes, Darbhanga Circle, Darbhanga.

vii. For issuance of direction to the concerned respondents for de-freezing the Account No. 20338908861 of the petitioner, maintained by the erstwhile Allahabad Bank, Darbhanga, now known as the Indian Bank, as the said account has been freezed at the instance of the Deputy Commissioner, Sale Tax Department, Darbhanga Circle, Darbhanga.

viii. For quashing of Letter No. 805, dated 23.05.2018, issued by the Deputy Commissioner, Commercial Tax, Darbhanga Circle, Darbhanga.

ix. For grant of other relief / reliefs to which the petitioner may found entitled on the facts and circumstances of the present case.

The instant petition has been filed for quashing of the *ex-parte* order dated 02.07.2015 passed by the Assistant Commissioner of Commercial Tax, Darbhanga Circle, Darbhanga as also the entire proceeding initiated vide Case Nos. 28(1)351/2015-16, 28(1)352/2015-16, 31(1)375/2015-16 and 31(1)376/2015-16, pending before the Deputy Commissioner, Commercial Taxes, Darbhanga Circle, Darbhanga.

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 *ex-parte* order dated 02.07.2015 passed by the Assistant Commissioner of Commercial Tax, Darbhanga Circle, Darbhanga as also the entire proceeding initiated vide Case Nos. 28(1)351/2015-16, 28(1)352/2015-16, 31(1)375/2015-16 and 31(1)376/2015-16, pending before the Deputy Commissioner, Commercial Taxes, Darbhanga Circle, Darbhanga;

(b) The petitioner undertakes to deposit twenty per cent of the amount of the demand raised before the Assessing Officer. This shall be done within four weeks.

(c) 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;

(d) 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 after deposit of 20%.

(e) Petitioner undertakes to appear before the Assessing Authority on 20th September, 2021 at 10:30 A.M., if possible through digital mode;

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

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

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

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

(k) 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;

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

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

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

(o) 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;

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

(q) 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	