IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 10173 of 2020

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Manoj Kumar , aged about 50 years , male , son of Rajeshvar Ray , Mubarakpur , Shanti Nagar , P.S.- Shahpur , , Dinapur cum Khagaul , Patna , Bihar - 801503 ---------------------------- Petitioner

VERSUS

1. The State of Bihar through the Commissioner of commercial taxes Bihar, New Secretariat Patna
2. The Commissioner of commercial taxes Bihar , new Secretariat Patna
3. The Assistant Commissioner of Commercial Taxes, Danapur Circle Danapur

---------------------------------- Respondents

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Appearance :

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

For the Respondent/s : Mr. Vivek Prasad, G.P. 7

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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 : 23-06-2021

Petitioner has prayed for the following relief(s):

(i) For issuance of writ of certiorari, quashing of Assessment Order dated 2.3.2019 (Annexure- 1) .

(ii) For a stay of demand notice dated 6.3.2019 because respondents has attached the bank account number 446810110000341 in Bank Of India Dananpur which is a Saving account of the petitioner.

(iii) Or For Directing the Respondents to open the Bank account of the Petitioner to deposit the statutory amount for filing appeal before Joint Commissioner .

(iv) For Directing the respondents to condone the delay in filing of Appeal before joint Commissioner .

(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 post passing of the impugned order dated 2nd of March, 2019 [Annexure-1] petitioner's bank account(s) also stands attached.

Learned counsel for the Revenue, on the ground of availability of equally alternative efficacious remedy vehemently opposed the prayer made on behalf of the petitioner.

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 of assessment 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 2^{nd} of March, 2019 passed by the Joint Commissioner State Taxes in TIN No. 1004-4781-010 as also the demand notice dated 6^{th} of March, 2019;

(b) Petitioner shall deposit ten per cent of the total amount, being condition prerequisite for hearing of the appeal, before the Assessing Officer within four weeks, if not already done so for whatever reason(s);

(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) In this view of the matter, we also direct for de-freezing/de-attaching of the bank account(s) of the writ-petitioner attached in reference to the proceedings, subject matter of present petition. This shall be done immediately.

(e) Petitioner undertakes to appear before the

Assessing Officer on 26th of July, 2021 at 10:30 A.M., if possible through digital mode;

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

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

(i) 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;

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

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

(l) 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;

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

(n) 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	
Transmission Date	