IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 3942 of 2021

Anirudh Kumar, aged about-65years, gender-Male, S/o-Late Mahendra Prasad, R/o- Gandhi Mandir, Sabji Market, Jehanabad, Near Imambara, Jehanabad, Proprietor- M/S Anuradha Jewellers, Situated at Hospital Road, Jehanabad, Bihar-804408

……. …….Petitioner

Versus

1. The State of Bihar through secretary cum commissioner of commercial tax Bihar, Patna
2. The Secretary cum Commissioner of commercial tax, Vikash Bhavan, Baily Road, Patna, Bihar.
3. The Deputy Commissioner (Incharge) Jehanabad Circle, Jehanabad.

…………… Respondents

Appearance :

For the Petitioner/s	:	Mr. Krishna Mohan Mishra, Advocate Mr. Prasoon Kumar, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, S.C. 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 : 30-06-2021

Petitioner has prayed for the following relief(s):

"i. To quash the order passed by respondent deputy commissioner dated 30.03.2019 under section 31 (1), 3l (2) (a), (b) and 39 (4) of the Bihar Value Added Tax Act as well as notice of demand dated 31.03.2019 as the order has been passed within 24 hours of the issue of notice under section 31 of the Act as such the order suffer from the vice of arbitrariness.

ii. To hold and declare that the order passed by respondent is without jurisdiction because no valid notice under section 31 has been issued by the A.O cum Deputy Commissioner, therefore, order is illegal and without jurisdiction.

iii. To hold and declare that the order dated 30.03.2019 and demand dated 31.03.2019 is barred by limitation because the A.O cannot make re-assessment for the assessment year 20l3-14 at this stage.

iv. To further hold and declare that the order passed by the A.O is wholly illegal and arbitrary because the said order is not based on evidence rather is based on the seizure report forwarded by the Income tax department."

Learned counsel for the petitioner seeks quashing of the impugned order 30th of March, 2019 passed by Respondent No. 3 namely The Deputy Commissioner (Incharge), Jehanabad Circle, Jehanabad, in ID No. 10222682083 (Annexure-P/1), which is *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, 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 30th of March, 2019 passed by Respondent No. 3 namely The Deputy Commissioner (Incharge), Jehanabad Circle, Jehanabad, in ID No. 10222682083 (Annexure-P/1);

(b) We accept the statement of the petitioner that 10 per cent of the total amount, being condition prerequisite for hearing of the appeal, already stands deposited. 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) In this view of the matter, 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 Officer on 9th of August, 2021 at 10:30 A.M., if possible through digital mode;

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

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

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

(m) 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;

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

(o) 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	07.07.2021
Transmission Date	