IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15514 of 2021

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Jugal Kishore Prasad @ Yugal Kishore Prasad Son of Late Girijanandan Prasad, Resident of Village-Mangar Bigha, P.S. and District-Nawada.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Commercial Taxes, Govt. of Bihar, Patna.
2. The Commissioner, Commercial Taxes, Govt. of Bihar, Patna.
3. The Assistant Commissioner, Commercial Tax, Nawada Anchal, Nawada.
4. The I.G., Prison, Govt. of Bihar, Patna.
5. The Jail Superintendent, District Jail, Nawada.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Bipin Kumar
For the Respondent/s	:	Mr.Vikash Kumar (Sc11)

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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 : 22-09-2021

Petitioner has prayed for the following relief(s):

> "(i) For issuance of writ in the nature of Certiorari for quashing the order dated 26.02.2020 and the consequential order by which the order has been passed as a penalty to deposit Rs. 1,38,528/- (Tax+Interest+Penalty) for violation of the Section of Bihar Goods and Service Tax Act, 2017.
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> (ii) For a direction to the respondent authorities

to refund Rs. 1,38,528/- which has been deducted from the account of the petitioner without his permission and interest should be paid on that amount.

(iii) For any other relief/reliefs if petitioners found entitled in the facts and circumstances of the present case."

It is brought to our notice that vide impugned order dated 26.02.2020 and its consequential order passed by the Respondent No. 3, namely the Assistant Commissioner, Commercial Tax, Nawada Anchal, Nawada, for the tax period October, 2018 to March, 2019, whereby the penalty of Rs.1,38,528/- was imposed on the petitioner for violation of the Section of the Goods and Service Tax Act, 2017.

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 26.02.2020 and its consequential order passed by the Respondent No. 3, namely the Assistant Commissioner, Commercial Tax, Nawada Anchal, Nawada;

(b) The petitioner undertakes to deposit ten 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.

(e) Petitioner undertakes to appear before the Assessing Authority on 22nd of October, 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)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	29.09.2021
Transmission Date	