IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15791 of 2021

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Bipul Singh Son of Kailash Singh Resident of Laliyahi, P.S. - Sahayak, Katihar - 854105.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
3. The Assistant Commissioner of State Taxes, Katihar Circle, Katihar (March 2020).

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Gautam Kumar Kejriwal, Advocate
Mr. Alok Kumar Jha, Advocate
Mr. Prakash Chandra Agrawal, Advocate

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 : 08-09-2021

Petitioner has prayed for the following relief(s):

a) For issuance of a writ in the nature of certiorari for quashing of the undated ex - parte order passed by the respondent number 2 under section 74 (9) of the Bihar Goods And Services Tax Act, 2017 (hereinafter referred to as the Bihar act 2017 for the sake of brevity) whereby a demand of tax, interest and penalty totalling to a sum of ₹ 632,169/- has been raised against the petitioner ;

b) For further issuance of a writ in the nature of certiorari for quashing of the summary of order issued in form GST DRC - 07 dated 16.10. 2021 by the respondent No. 3 reiterating the said demand of tax, interest and penalty in terms of rule 142 (5) of the Bihar Goods And Services Tax Rules, 2017 (hereinafter referred to as the Bihar rules 2017 for the sake of brevity);

c) For further holding and a declaration that the ex- parte order imposing liability of tax, interest and penalty passed by the respondent No. 3

being not only violative of the principles of natural justice but also devoid of reasons and in teeth of section 74 (9) of the Bihar Act, 2017 as penalty imposed is equal to the amount of tax determined which is contrary to the mandate of law;

d) For further holding and a declaration that the action taken by the respondent No. 3 under section 79 of the Bihar Act 2017 whereby the bank account of the petitioner was attached is also in violation of the rule of law prescribed under section 78 proviso to the Bihar Act 2017 as the petitioner was never intimated about the urgency warranting exercise of such powers;

e) For further restraining the respondents from taking any coercive action against the petitioner for recovery of the amount of tax, interest and penalty in terms of the impugned order of assessment passed under section 74 (9) during the pendency of the present writ application;

f) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case.

It is brought to our notice that vide impugned undated ex parte order passed by the Respondent No. 3 namely the Assistant Commissioner of State Taxes, Katihar Circle, Katihar in GSTIN 10BCDPS4652L1ZJ, under Section 74(9) of CGST/BGST Act, 2017 and summary of order dated 16th of October, 2021, for the tax period March, 2020 in Form GST DRC-07, a demand of tax interest and penalty of Rs.632,169/- has been raised and reiterated against the petitioner.

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 undated ex parte order passed by the Respondent No. 3 namely the Assistant Commissioner of State Taxes, Katihar Circle, Katihar in GSTIN 10BCDPS4652L1ZJ, under Section 74(9) of CGST/BGST Act, 2017 and summary of order dated 16th of October, 2021, for the tax period March, 2020 in Form GST DRC-07;

(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 28th of 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)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	17.09.2021
Transmission Date	