IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17446 of 2021

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Ranjit Prasad Sah Proprietor Sunrise Construction (Male), aged about 48 years, Son of Late Prithwichand Sah, Resident of Gamhariya, P.S.- Sour Bazar, District - Saharsa.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Commercial and Tax, Bihar, Patna.
3. The Commissioner State Tax, Bihar, Patna.
4. The Additional Commissioner State Tax, Purnea.
5. The Assistant Commissioner of State Tax, Saharsa.
6. The Joint Commissioner of State Tax, Saharsa.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar Sinha, Advocate
For the Respondent/s	:	Mr.Vikash Kumar, SC 11

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

Date : 30-09-2021

This petition was filed on 29.09.2021, which was registered and listed immediately, and is taken up today for hearing.

Petitioner has prayed for the following relief(s):

> i. For quashing the impugned order as contained in memo no.391 and 392 dated 06.03.2021 passed by the Additional State Tax, Commissioner, Purnea Division, Purnea whereby and whereunder appeals filed by the petitioner

have been rejected only on the ground of limitation which are not sustainable in the eye of law and fit to be set aside.

ii. Further for quashing the order of demand vide reference no. 2A1002200220840 and reference no.2A100220022093P dated 19.02.2020, issued by the Assistant Commissioner of State Tax, Saharsa, Purnea, Bihar which are without giving opportunity for hearing to the petitioner as such demand have been issued which are not sustainable in the eye of law and fit to be set – aside.

iii. Further for a direction to the respondent Joint Commissioner to re-assessed the tax after being given proper opportunity to the petitioner.

iv. To grant any other relief(s) for which the petitioner is entitled to get in the eye of law."

It is brought to our notice that vide impugned order dated 06.03.2021, passed in Appeal No. (ARN) AD1003210002358 for the period 01.10.2018 to 31.03.2019, Memo No. 391, (Annexure-1) and the order dated 6th of March, 2021 passed in Appeal No. (ARN) AD1003210002165, Memo No. 392 (Annexure-2), by Respondent No. 4 namely Additional Commissioner State Tax, Purnea, the appeal of the petitioner against the order dated 19.02.2020, passed by the Respondent No. 5 namely Assistant Commissioner of State Tax, Saharsa, in Reference No. ZA1002200220840, GSTIN/ID-

10AUHPS7980E2ZG (Annexure-3 series) and Summary of Order in Form GST DRC-07 dated 19.02.2020 in Reference No. ZA1002200220840, has been rejected merely on the grounds of being barred by limitation. Both the orders were *ex parte* in nature.

In our considered view, the delay stands sufficiently explained on account of COVID restrictions.

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 06.03.2021, passed in Appeal No. (ARN) AD1003210002358 for the period 01.10.2018 to 31.03.2019, Memo No. 391, (Annexure-1) and the order dated 6th of March, 2021 passed in Appeal No. (ARN) AD1003210002165, Memo No. 392 (Annexure-2), both by Respondent No. 4 namely Additional Commissioner State Tax, Purnea, the order dated 19.02.2020, passed by the Respondent No. 5 namely Assistant Commissioner of State Tax, Saharsa, in Reference No. ZA1002200220840, GSTIN/ID-10AUHPS7980E2ZG (Annexure-3 series) and Summary of Order in Form GST DRC-07 dated 19.02.2020 in Reference No. ZA1002200220840;

(b) We accept the statement of the petitioner that ten per cent of the total amount, being condition prerequisite for hearing of the appeal, already stands deposited. If that were so, well and good. 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 [Joint Commissioner of State Tax, Saharsa (Respondent No. 6)]. 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 [Joint Commissioner of State Tax, Saharsa (Respondent No. 6)]. 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) 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 Authority on 28th of October, 2021 at 10:30 A.M., if possible through digital mode;

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

(h) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

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

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

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

(l) 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;

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

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

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

(p) 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;

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

(r) 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)

(Rajendra Kumar Mishra, J)

Ashwini/PKP/

AFR/NAFR	
CAV DATE	
Uploading Date	30.09.2021
Transmission Date	