IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17737 of 2021

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M/s Raiyan Traders a proprietorship firm having its place of business at A.K. Market, Mahatma Gandhi Setu, Pahari, Patna - 800007 through its proprietor namely Md. Imran Alam male aged about 38 years son of Md. Wahabuddin resident of Phulwarisharif, Makhdum Rasti Nagar, Phulwarisharif, Patna - 801505.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Assistant Commissioner of State Taxes, Patna City West Circle, Patna City, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Gautam Kumar Kejriwal, Advocate
For the Respondent/s	:	Mr.Vivek Prasad, GP-7

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

Date : 06-10-2021

Petitioner has prayed for the following relief(s):-

a) For issuance of a writ in the nature of certiorari for quashing of the order dated 13.08.2019 passed by the respondent no. 2 under section 73 read of the Bihar Goods And Services Tax Act, 2017 (hereinafter referred to as the Bihar act 2017 for short) without any show cause notice or notice of demand issued under section 73 (1) and/or 73 (5) of the said act and without any opportunity of hearing afforded to the petitioner before determination of liability of tax, interest and penalty under the said provision of law;

b) For further issuance of a writ or order or direction upon the respondent number 2 to provide a copy of all the documents and materials seized in course of inspection of the business place of the petitioner and ensure compliance of various procedures prescribed under section 73 of the Bihar act 2017 read with rule 142 of the Central Goods And Services Tax Rules, 2017 (hereinafter referred to as the central rules

2017 for short) before taking any decision as regards determination of any liability of the petitioner for the financial year 2018 – 2019;

c) For holding and a declaration that the entire action of the respondent number 2 in determining the liability of tax, interest and penalty against the petitioner followed by issuance of an order under section 73 of the Bihar act 2017 in course of a proceeding initiated under section 129 (4) of the Bihar act 2017 in absence of any of the notices served under section 73 of the Bihar act 2017 is illegal and without jurisdiction;

d) For further holding and a declaration that the respondent number 2 is duty bound to consider each and every issue raised and contended by the petitioner in the reply submitted in course of a proceeding initiated for determination of fiscal liability and in absence of consideration of such reply, the impugned order dated 13.08.2019 otherwise also suffers from the vice of principles of natural justice;

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

This petition has been filed for quashing of order dated 13.08.2019 passed by the respondent no. 2 namely The Assistant Commissioner of State Taxes, Patna City West Circle, Patna City, Patna in GSTIN-10AIMPA0615K1ZV. The order 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, 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 13.08.2019 passed by the respondent no. 2 namely The Assistant Commissioner of State Taxes, Patna City West Circle, Patna City, Patna in GSTIN-10AIMPA0615K1ZV.

(b) The petitioner undertakes to deposit 15% of the amount of the demand raised before the Assessing

Officer. This shall be done within eight 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 15th of December, 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 the 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)

Sujit/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.10.2021
Transmission Date	