IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20243 of 2021

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Mateshwari Construction Mamaka Niwas, New Area, Chhitore Nagar, Aurangabad- 824101. having GSTIN 10AAAAM9517H1ZV through its Partner Vikash Kumar

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. Joint Commissioner of State Tax Aurangabad, Magadh, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Jha, Advocate Mr.Aman Raja, Advocate Mr. Sanjeev Kumar, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (SC 11)

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

Date : 21-12-2021

Petitioner has prayed for the following relief(s):

a) For issuance of appropriate writ/ direction(s) to prevent the respondent authorities from exceeding its jurisdiction and/or acting contrary to the rule of natural justice, where the defect of jurisdiction is apparent on the face of the proceedings and/or there is an abuse of power.

b) For issuance of a writ in the nature of certiorari for quashing of the order 30.10.2021contained in Annexure-4 passed byJoint Commissioner of State Tax Aurangabad circle Aurangabadu/s 74 of Bihar GST Act-2017(hereinafter referred to as the Act -2017 for short) for the Financial Year 2020-2021 as well as quashing the consequential demand notice in FORM GST DRC- 07 dated 30.10.2021;

c) For issuance of a writ in the nature of certiorari for quashing of the order dated 30.10.2021 passed by Joint Commissioner of State Tax, Aurangabad circle Aurangabad u/s 74 of the Act for the Financial Year 2020-2021 as the Order is apparently arbitrary in as much as the same is passed without taking into consideration the return filed for the month of March, 2021 as well as without providing a proper opportunity of hearing.

d) For issuance of a writ or order or direction on respondents especially to award an opportunity of filing the comprehensive reply and also of hearing in the proceeding initiated under section 74 of the act and decide the matter afresh after considering all materials and explanation submitted by the petitioner;

e) For holding and a declaration that the action of the respondent is in sheer violation of the Principles of Natural Justice as no reasonable opportunity for hearing was provided to the Petitioner in the course of the proceedings and the decision is denial of rights to adequate opportunity of hearing and therefore violates the principles of natural justice;

f) For further holding and a declaration that in the undisputed facts and circumstances of this case the petitioner is entitled to an opportunity of submitting its case and also of hearing on the issues of facts and law before any fresh decision is taken by the respondent assessing authority in terms of the provisions of the act;

g) For issuance of appropriate writ/direction(s) upon the Respondents to grant stay of demand and further consequential proceedings till the disposal of the writ application before this Hon'ble court.

h) 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 order dated 30.10.2021 passed by the Respondent No. 2 namely the Joint Commissioner of State Tax, Aurangabad in GSTIN -10AAAAM9517H1ZV, for the tax period April 2020 March, 2021 and the consequential demand notice dated 30.10.2021 in Form GST DRC-07, a demand of 12,94,66,670/- has been raised 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 order dated 30.10.2021 passed by the Respondent No. 2 namely the Joint Commissioner of State Tax, Aurangabad in GSTIN -10AAAAM9517H1ZV, for the tax period April 2020 March, 2021 and the consequential demand notice dated 30.10.2021 in Form GST DRC-07;

(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 Rs.10,00,000/- out 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) 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 18th of January, 2022 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)

(S. Kumar, J)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	24.12.2021
Transmission Date	