IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20357 of 2021

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Pritam Singh S/o Late Mangal Singh Resident of 110-111, Punjabi Colony, Chitkohra, P.S.-Gardanibagh, District-Patna Proprietor of Rajdhani Cycle Store, Fraser road, Patna.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Commercial Taxes Department, Government of Bihar
3. The Commissioner of State Tax Cum Secretary Bihar, Patna.
4. The Additional Commissioner (Appeal), State Tax Patna West Division, Bihar, Patna.
5. The Joint Commissioner State Tax Patna West Circle, Bihar, Patna.
6. The Assistant Commissioner of State Tax Patna West, Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Prashant Sinha, 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 : 14-12-2021

Petitioner has prayed for the following relief(s):

i. For issuance of writ in the nature of Certiorari for quashing of the order contained in memo no 1276 dated 07/09/2021 issued by the State Tax Additional Commissioner (Appeal) Patna West Division, Patna whereby the appeal preferred by the petitioner bearing no AD100121004430A has been rejected on the ground of non-production of the certified copy of the order passed by the Assistant Commissioner of State Tax Patna West, Patna under order no ZD101220019141K.

ii. For holding that the petitioner was not at fault as the petitioner had already obtained the certified copy of the order under appeal but due to non-communication of the order dated 27/08/2021 for producing the same by 31/08/2021, he could not produce it and the appeal got dismissed.

iii. For necessary direction upon the respondent, The Additional Commissioner (Appeal), State Tax Patna West Division, Patna to decide the appeal preferred by the petitioner on merits as the Assistant Commissioner of State Tax Patna West, Patna has passed an ex parte order against the petitioner.

iv. For issuance of writ in the nature of Certiorari for quashing of the order dated 18/12/2020 passed by the Assistant Commissioner of State Tax Patna West, Patna in Case no. ZD101220019141K whereby an amount of Rs 2,71,617 has been assessed inclusive of tax, interest and penalties.

v. For restraining the respondents from making any recovery from the petitioner pursuant to the order dated 18/12/2020 passed in Case no. ZD101220019141K passed by Assistant Commissioner of State Tax Patna West, Patna during the pendency of this writ application

vi. For any other direction which your Lordships may deem fit and proper in the facts and circumstances of the case.

It is brought to our notice that vide impugned order dated 7th of September, 2021 passed by the Respondent No. 4 namely the Additional Commissioner of State Tax (Appeal), West Division, Patna in Appeal Case No. AD100321004430A, the appeal of the petitioner against the order dated 18.12.2020 passed by the Respondent No. 6, The Assistant Commissioner of State Tax West, Patna in Case No. ZD101220019141K has been rejected merely on the grounds of non-production of certified copy of the order passed by the Assistant Commissioner of State Tax, West, Patna.

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 7th of September, 2021 passed by the Respondent No. 4 namely the Additional Commissioner of State Tax (Appeal), West Division, Patna in Appeal Case No. AD100321004430A, and the order dated 18.12.2020 passed by the Respondent No. 6, The Assistant Commissioner of State Tax West, Patna in Case No. ZD101220019141K;

(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. 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 17.01.2022 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	17.12.2021
Transmission Date	