**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.783 of 2022**

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M/s Deepak Raj Navratan Hata, Purnea-854301 through its Authorised representarive namely Piyush Kedia Male aged about 30 Years Son of Ratan Kedia Resident of Kaptanpara, Kuskibagh, VTC, P.O. and District-Purnea-854301.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (APPeals), Purnea Division, Purnea.
3. The Joint Commissioner of State Taxes, Purnea, Purnea (2019-2020)

... ... Respondent/s

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**Appearance :**
For the Petitioner/s : Mr.Gautam Kumar Kejriwal, 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 : 24-01-2022**

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 11.01.2021 and summary of order in form GST DRC- 07 dated 12.01.2021 under Rule 1242(5) of the Bihar Goods and Services Tax Rules, 2017 (hereinafter referred to as the "Bihar Rules, 2017" for short) passed and issued by the respondent number 3 under Section 73 (1) of the Bihar Goods and Service Tax Act, 2017 (hereinafter referred to as the "Bihar Act, 2017" for short).

b) For issuance of a writ in the nature of certiorari for quashing of the appellate order dat3ed 17.08.2021 issued vide memo number 657 Purnea passed by the respondent number 2 whereby the appeal preferred by the petitioner against the original order dated 11.01.2021 has been rejected.

c) For further holding and a declaration that the impugned order dated 17.08.2021 passed by the respondent No. 2 is highly cryptic, misconceived, nonspeaking and violative of principles of natural justice .

d) For further holding and a declaration that the entire proceeding initiated by the respondent no.3 in terms of Secton 73 of the Bihar Act 2017 is illegal, premature and without jurisdiction in view of non-invocation of the provision of Section 61 of the said act prior to initiation of a proceeding under Section 73.

e) For issuance of a writ or order or direction restraining the respondent no.3 from taking any coercive recovery of the amount in demand (tax, interest and penalty) as contained in the order dated 11.01.2021 during the pendency of the present writ application.

e) 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 17.08.2021 passed by the Respondent No. 2 namely the Additional Commissioner of State Taxes (Appeals), Purnea Division, Purnea, in Appeal No. (ARN) AD1004210011472, the appeal of the petitioner against the order dated 11.01.2021 passed by Respondent No. 3, namely the A.C.S.T., Purnea in GSTIN 10ARGPR0693D1Z3, under Section 73 of BGST Act, 2017; and summary of order dated 12.01.2021 in Form GST DRC-07 for the tax period October, 2019 to March, 2020, has been rejected by a cryptic, misconceived and non-speaking order.

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; (c) We also find the authorities not to have adjudicated the matter on the attending facts and circumstances. All issues of fact and law ought to have been dealt with, even if the proceedings were ex parte in nature.

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 17.08.2021 passed by the Respondent No. 2 namely the Additional Commissioner of State Taxes (Appeals), Purnea Division, Purnea, in Appeal No. (ARN) AD1004210011472, the order dated 11.01.2021 passed by Respondent No. 3, namely the A.C.S.T., Purnea in GSTIN 10ARGPR0693D1Z3, under Section 73 of BGST Act, 2017; and summary of order dated 12.01.2021 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 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 24.02.2022 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/DKS

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| **AFR/NAFR** | |
| **CAV DATE** | |
| **Uploading Date** | 28.01.2022 |
| **Transmission Date** | |