IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1357 of 2022

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Aditya Medi Sales Ltd. a registered company having its place of business at Mehta Building Compound, Sandalpur, Patna- 800006 through its authorised representative namely Sushaant Shekhar male aged about 42 years, Son of Sajjan Kumar, Resident of 150 B, Arya Kumar Road, Nr. S.K. Sinha Memorial Hospital, Rajendra Nagar, Rajendra Nagar, Patna, Bihar- 800016.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Joint Commissioner of State Taxes, Kadam Kuan Circle, 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)

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/Hon'ble Judges through Video Conferencing from their residential offices/residences. Also the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 31-01-2022

Heard learned counsel for the parties.

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

a) For issuance of a writ in the nature of certiorari for quashing of the ex parte order dated 16.08.2021 passed and the summary of order in form GST DRC – 07 dated 25.10.2021 passed by the respondent number 2 under section 73 of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as the Central Act 2017 for short) and Bihar Goods And Services Tax Act, 2017 (hereinafter referred to as the Bihar act 2017 for short) raising demand of tax, interest and penalty on the basis of objection forwarded by the office of the Comptroller and Auditor General of India Bihar, Patna;

b) For issuance of writ or order or direction restraining the respondent number 2 from making any coercive recovery of the tax, interest and penalty demanded in terms of the impugned ex - parte order of assessment during the pendency of the present writ application;

c) For holding and a declaration that the impugned order is in teeth of the settled principle of law that no decision passed after due examination of materials on record can be reopened in absence of any material foreign to the original records;

d) 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 16.08.2021 passed by the respondent no. 2 namely The Joint Commissioner of State Taxes, Kadam Kuan Circle, Patna in GSTIN/ID-10AABCA9317J1ZZ as also summary of order dated 25.10.2021 passed in GST DRC-07 for the period 2017-18. 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 reasons sufficient 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 16.08.2021 passed by the respondent no. 2, namely, The Joint Commissioner of State Taxes, Kadam Kuan Circle, Patna in GSTIN/ID-10AABCA9317J1ZZ as also summary of order dated 25.10.2021 passed in GST DRC-07 for the period 2017-18;

(b) The petitioner undertakes to deposit 20% 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 had already deposited up to the extent of twenty percent, the same shall be set off against the amount to be deposited. Also, if the deposit is found to be 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 28.02.2022 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) 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 to be *ex parte* in nature;

(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 assessment, 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 before this Court, 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 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)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	02.02.2022
Transmission Date	