

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2762 of 2022

Ratneshwari Prasad Thakur, Son of Janak Thakur Resident of Ward No. 12,
Bishunpur Pandey, Bada Hasan, Meenapur, Kanti, Muzaffarpur, Bihar
843109.

... .. Petitioner/s

Versus

1. State of Bihar Through the Commissioner of State Tax, having its office at
Vikas Bhawan Bailey Road, Patna.
2. Assistant Commissioner of State Tax, East Circle, Muzaffarpur, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. D.V.Pathy, Advocate
For the Respondent/s : Mr. Vikash Kumar, SC-11

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

Date : 21-02-2022

The petitioner has prayed for the following relief/s :

- i) the order dated 12.01.2021 (as contained in Annexure -5) for the Tax Period October 2019 to March 2020 passed by the respondent no. 2 under section 74 of the Bihar Goods and Services Tax Act, 2017 (hereinafter called the BGST Act) without grant of a reasonable opportunity of being heard in the matter and without passing a speaking order be quashed.

- ii) the summary of order dated 12.01.2021 (as contained in Annexure -6) for the Tax Period October 2019 to March 2020 passed by the respondent no. 2 in Form GST DRC - 07 be quashed.
- iii) the order dated 12.01.2021 (as contained in Annexure -4) for the Tax Period October 2019 to March 2020 passed by the respondent no. 2 under section 74(9) of the BGST Act be quashed.
- iv) for granting any other relief (s) to which the petitioner is otherwise found entitled to.

Petitioner has prayed for quashing of the order dated 12.01.2021, passed by the Respondent No. 2 namely Assistant Commissioner of State Taxes, East Circle, Muzaffarpur, Bihar in GSTN 10ACAPT7136Q2ZA (Annexure-4), order dated 12.01.2021 passed by Respondent No. 2 in Reference No. ZA1003200020204 (Annexure-5); and summary of the order in Form GST DRC-07 dated 12.01.2021 passed by Respondent No. 2 (Annexure-6);

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 12.01.2021, passed by the Respondent No. 2 namely Assistant Commissioner of State Taxes, East Circle, Muzaffarpur, Bihar in GSTN 10ACAPT7136Q2ZA (Annexure-4), order dated 12.01.2021 passed by Respondent No. 2 in Reference No. ZA1003200020204 (Annexure-5); and summary

of the order in Form GST DRC-07 dated 12.01.2021 passed by Respondent No. 2 (Annexure-6);

(b) Petitioner undertakes to deposit twenty 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 09.03.2022 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 stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, 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)

ranjan/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	