

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3892 of 2022

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M/s Jai Guru Construction a proprietorship firm having its place of business at Ward Number 02, Nariyar Road, Naya Bazar, Saharsa - 852001 through its authorised representative namely Sarang Shubham male aged about 26 years, Son of Ranjeet Kumar Singh, Resident of Ward No. 18, Village and Town Durgapur, P.O. Bhaddi, District - Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeals), Purnea Division, Purnea.
3. The Assistant Commissioner of State Taxes, Saharsa Circle, Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate Mr. Atal Bihari Pandey, Advocate Mr. Alok Kumar Jha, 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 : 09-03-2022

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 14.01.2021 and summary of order in form GST DRC – 07 dated 15.01.2021 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) read with central goods and services tax act 2017 (hereinafter referred to as the central act 2017 for short);



- b) For issuance of a writ in the nature of certiorari for quashing of the decision of rejection of the appeal preferred by the petitioner before the respondent number 2 which has been communicated to the petitioner through form GST APL – 02 dated 15.07.2021;
- c) For holding on a declaration that the impugned order dated 14.01.2021 passed by the respondent No. 3 is highly cryptic, nonspeaking and based on complete nonapplication of mind to the figures mentioned and admitted in the returns for the months of February and March 2020 already filed by the petitioner on 08.01.2021 much before the impugned order was passed;
- d) For holding and a declaration that the impugned order passed by the respondent No. 3 under section 73 of the Bihar act 2017 and central act 2017 is contrary to the records and as such unsustainable in the eye of law;
- e) For issuance of a writ or order or direction restraining the respondent No. 3 from making any coercive recovery of the amount in demand (tax, interest and penalty) as stipulated in the impugned order dated 14.01.2021 during the pendency of the present writ application;
- f) 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 in Form GST APL-02 dated 15.07.2021 passed by the Respondent No. 2, namely the Additional Commissioner of State Taxes (Appeals), Purnea Division, Purnea, in Reference No.



ZD100721001321H, the appeal of the petitioner against the order dated 14.01.2021 passed by the Respondent No. 3, namely the Assistant Commissioner of State Taxes, Saharsa Circle, Saharsa (Annexure-4); order dated 15.01.2021 passed by Assistant Commissioner of State Tax, Saharsa, Purnea, Bihar in Reference No. ZD100121013217G (Annexure-4/A) and Summary of the Order in Form GST DRC-07 dated 15.01.2021 has been rejected merely on the grounds of being barred by limitation. Both the orders were *ex parte* in nature.

In our considered view, the delay stands sufficiently explained on account of COVID restrictions.

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. 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.

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 in Form GST APL-02 dated 15.07.2021 passed by the Respondent No. 2, namely the Additional Commissioner of State Taxes (Appeals), Purnea Division, Purnea, in Reference No. ZD100721001321H, order dated 14.01.2021 passed by the Respondent No. 3, namely the Assistant Commissioner of State Taxes, Saharsa Circle, Saharsa (Annexure-4); order dated 15.01.2021 passed by Assistant Commissioner of State Tax, Saharsa, Purnea, Bihar in Reference No. ZD100121013217G (Annexure-4/A) and Summary of the



Order in Form GST DRC-07 dated 15.01.2021;

(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 4th of April, 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)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	10.03.2022
Transmission Date	

