IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4150 of 2022

M/s. B.N. Enterprises through its partner cum Authorized Signatory, Bhola Nath Prasad, aged about 60 years, Male, son of Late Lakhi Chand Prasad, resident of Village Nechua Jalalpur, P.S. Kuchaikote, District Gopalganj, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of State Tax cum Secretary, Bihar, Patna.
2. The Joint Commissioner of State Tax, Gopalganj, Saran, Bihar.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Prabhat Ranjan, Advocate
For the Respondent/s	:	Mr.Vivek Prasad (GP 7)

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-04-2022

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

> "For issuance of appropriate writ, rule or direction for:
>
> (i) Quashing of the Notice to Show Cause dated 09.02.2020 vide Reference No. ZA100220008812H under Section 73 of the CGST, 2017 whereby the petitioner was asked to furnish Reply along with supporting documents regarding erroneous claim of the input Tax credit for an amount of Rs. 57,08,191.20 by 09.03.2020;
>
> (ii) Quashing of the consequential order

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> under Section 73 of the Act vide Reference No. ZA100220008812H dated 08.03.2020 whereby without considering the objection/ reply filed by the petitioner, an amount of Rs. 57,08,191.29 has been directed to be deposited by the petitioner on or before 13.03.2020 failing which, initiation of recovery proceedings have been contemplated; and
>
> (iii) Restraining the Respondents from proceeding further in terms of the order dated 08.03.2020 vide Reference No.ZA100320013346H during the pendency of the present writ petition."

It is brought to our notice that vide impugned order dated 08.03.2020 passed by the Respondent No. 2, namely the Joint Commissioner of State Tax, Gopalganj, Saran, Bihar, whereby the petitioner was asked to furnish reply along with supporting documents regarding erroneous claim of the input tax credit amounting to Rs. 57,08,191.20, including penalty, has been imposed, without considering the grounds taken in response to the show cause notice while passing the impugned order.

Shri Prabhat Ranjan, learned counsel for the petitioner, states that entire amount stands recovered.

Learned counsel for the Revenue, states that he has

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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 08.03.2020 passed by the Respondent No. 2, namely the Joint

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Commissioner of State Tax, Gopalganj, Saran, Bihar;

(b) 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;

(c) 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.

(d) Petitioner undertakes to appear before the Assessing Authority on 19.04.2022 at 10:30 A.M., if possible through digital mode;

(e) The Assessing Authority shall decide the case on merits after complying with the principles of natural justice;

(f) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

(g) During pendency of the case, no coercive steps shall be taken against the petitioner.

(h) The Assessing Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(i) Petitioner through learned counsel undertakes to

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fully cooperate in such proceedings and not take unnecessary adjournment;

(j) 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;

(k) The Assessing Authority shall pass a speaking order, assigning reasons, copy whereof shall be supplied to the parties;

(l) Liberty reserved to the petitioner to challenge the order, if required and desired;

(m) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(n) 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;

(o) We have not expressed any opinion on merits and all issues are left open;

(p) If possible, proceedings during the time of current Pandemic [Covid-19] be conducted through digital mode;

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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

AFR/NAFR	
CAV DATE	
Uploading Date	11.04.2022
Transmission Date	

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