IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4434 of 2022

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M/s Renu Kumari (sole proprietor firm) having its registered office at village - Mahmadpur Baya P.O. and P.S. Saraiya, District - Muzaffarpur through its proprietors Mrs. Renu Kumari.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue, having its office at Room No. 46, North Block, P.O. and P.S. North Block, New Delhi- 110001.
2. The Central Board of Indirect Taxes and Customs, through its Chairman, Ministry of Finance, Department of Revenue, having its Office at North Block, P.O. and P.S. North Block, New Delhi- 110001.
3. The Commissioner of Central Goods and Services Tax and Central Excise, Patna having its office at New Secretariat Patna Bihar.
4. Joint Commissioner of State Tax, West Circle, Muzaffarpur, Bihar.
5. Assistant Commissioner of State Tax, West Circle Muzaffarpur, Bihar.
6. Additional Commissioner (Appeal), Muzaffarpur Division, Muzaffarpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Anurag Saurav, Advocate Mr. Abhinav Alok, Advocate Mr. Priyajeet Pandey, Advocate
For the U.O. I.	:	Mr. Anshuman Singh, Sr. S.C., C.G.S.T. & CX
For the State	:	Mr.Vivek Prasad, (G.P. 7)

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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 following reliefs : -

(i) For issuance of an appropriate writ/order/direction for setting aside order bearing reference no.**ZD1001210116295** dated 13.01.2020 passed by Assistant Commissioner of State Tax Jurisdiction, Muzaffarpur, Bihar whereby and whereunder tax (along with interest and penalty) amounting Rs.7,91,709/- has been imposed by the respondent under Section 74 of BGST Act and the said proceeding has been initiated by the respondent authorities on the ground that a deduction of TDS in the name of petitioner were reflecting in GSTR -7 of some deductor and the same has not been disclosed by the petitioner in their return.

(ii) For setting aside order dated 10.12.2020 passed by Assistant Commissioner of State Tax Jurisdiction, Muzaffarpur, Bihar whereby and whereunder an amount of Rs.7,91,709/- has been imposed on the petitioner by respondent authority on the ground of not disclosing accurate turnover from October, 2019 to March, 2020.

(iii) For setting aside the demand notice issued in the Form of GST DRC 07 dated 13.01.2021 whereby and whereunder a tax amounting Rs.7,91,709/- has been imposed.

(iv) For setting aside order dated 13.01.2021 issued by Process No.884 dated 26.02.2021 to Branch Manager and District Co-ordinator by Respondent No.5 whereby and whereunder respondent directed to recover the sum amount of Rs.7,91,710/- from the account of petitioner.

(v) For restraining the respondent authorities for issuance of DRC 13 for recovery of tax amount through the Bank account attachment.

(vi) For issuance of an appropriate writ(s), order(s) and/or direction (s) as Your Lordships may deem fit and proper in the facts and circumstances of this case in the interest of justice.

It is brought to our notice that vide impugned orders and the demand notice dated 10.12.2020 and 13.01.2021, passed by the Respondent No. 5, namely the Assistant Commissioner of State Tax, West Circle, Muzaffapur, tax liability amounting to Rs.7,91,709/-, including interest and penalty, has been imposed, without providing any opportunity to the petitioner.

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 orders and the demand notice dated 10.12.2020 and 13.01.2021, passed by the Respondent No. 5, namely the Assistant Commissioner of State Tax, West Circle, Muzaffapur, imposing tax liability amounting to Rs.7,91,709/-, including interest and penalty;

(b) The 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.

(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's deposit is 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 19.04.2022 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) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

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

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

(j) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(k) 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;

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

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

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

(o) 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;

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

(q) 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/chn

AFR/NAFR	
CAV DATE	
Uploading Date	11.04.2022
Transmission Date	