IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5177 of 2022

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Prakash Kumar Son of Late Ramjee Prasad Sharma, Resident of Ward No. 3 Shankar Saraiya, Fateh Tola, P.S.- Turkauliya, District - East Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Chief Commissioner, State Tax, Bihar, Patna.
2. The Principal Chief Commissioner, State Tax, Bihar, Patna.
3. The Chief Commissioner, State Tax, Bihar, Patna.
4. The Joint Commissioner, State Tax, Motihari Circle, Motihari.
5. The Assistant Commissioner, State Tax, Motihari Circle, Motihari.
6. The Deputy Commissioner, State Tax, Motihari Circle, Motihari.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ranjeet Kumar, Advocate
For the Respondent/s	:	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 : 25-04-2022

Heard learned counsel for the parties.

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

I. For setting aside the order dated 03.03.2020 passed by the Assistant Commissioner of State Tax, Motihari Circle, Motihari u/s 74 of the Bihar Goods and Services Tax Act, 2017, whereby tax, interest and penalty of Rs. 278954 has been imposed for the period April 2019 to September 2019.

II. For setting aside the DRC 07 dated 03.03.2020, issued by the Assistant Commissioner of State Tax, Motihari Circle, Motihari for Rs. 278954/-.

III. For setting aside the order dated 09.01.2021, passed by the Assistant Commissioner of State Tax, Motihari Circle, Motihari, whereby tax, interest and penalty for Rs. 95572/- has been imposed for the period of October, 2019 to March, 2020.

IV. For setting aside the DRC 07 dated 09.01.2021, issued by the Assistant Commissioner of State Tax, Motihari Circle, Motihari, for Rs. 95572.

V. For that petitioner further prays that after setting aside the aforementioned impugned orders and DRC 07, the matter may be remanded back to the assessing authority to reconsider the matter afresh after providing opportunity of hearing to the petitioner for the reason the petitioner subsequently filled up all its return and deposited all its tax, interest and penalty as per its return.

VI. For any other relief for which the petitioner may be deemed entitled to.

Petitioner has prayed for quashing of the order dated 03.03.2020 passed by the Assistant Commissioner, State Tax, Motihari Circle, Motihari in Reference No. ZA100320002585E (Annexure-1); order dated 09.01.2021 passed by the Assistant Commissioner, State Tax, Motihari Circle, Motihari in Reference No. ZD1001210077364 (Annexure-2); Summary of the order in Form GST DRC-

07 dated 03.03.2020 (Annexure-3) and summary of the order in Form GST DRC-07 dated 09.01.2021 (Annexure-4). The orders were passed without complying with the principles of natural justice.

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 dated 03.03.2020 passed by the Assistant Commissioner, State Tax, Motihari Circle, Motihari in Reference No. ZA100320002585E (Annexure-1); order dated 09.01.2021 passed by the Assistant Commissioner, State Tax, Motihari Circle, Motihari in Reference No. ZD1001210077364 (Annexure-2); Summary of the order in Form GST DRC-07 dated 03.03.2020 (Annexure-3) and summary of the order in Form GST DRC-07 dated 09.01.2021 (Annexure-4);

(b) Shri Ranjeet Kumar, learned counsel for the petitioner states that more than 25 per cent of the total amount in demand already stands deposited.

(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 16th of May, 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)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	