IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4629 of 2022

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M/s Singh Construction having registered office at House No.10, 6/D, Magadh Vihar Colony, Anisabad, P.S. Gardanibagh, Patna- 800002 represented by its partner Chandra Kant Singh (Aged 50 years, Sex- Male), Son of Nawal Kishor Singh, Resident of House No.10, 6/D, Mohalla-Gardanibagh, P.S.- Gardanibagh, Patna- 800002.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner and Secretary, Department of Commercial Tax, Government of Bihar, Vikash Bhawan, Patna- 800001.
2. The Joint Commissioner of State Tax (Appeals), Patna West Division, Patna.
3. The Joint Commissioner of State Tax, Patna West Division, Patna.
4. The Deputy Commissioner of State Tax, Patna South Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Narendra Kumar, Advocate Mr. Pranav Ranjan, Advocate Mr. Shailendra Kumar Ambastha, 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 : 25-04-2022

Heard learned counsel for the parties.

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

1. That this is an application praying for issuance of writ in nature of *Certiorari* or any other appropriate writ/writs, order(s) direction(s) for setting aside the impugned order Dated 28/02/2022 passed by the Respondent No. 02 in GST-PS-26, 27, 28, 29 & 30/2021-22 for the period

> November-2018, January-2019, March, 2019-, May & June-2019 whereby he has upheld the impugned ex-parte assessment orders Dt.05.032020 & 07.03.2020 (Annexure-3-Series) passed by the Respondent No. 04 and demanded a sum of Rs.13,26,356.00

It is brought to our notice that vide impugned order dated 28.02.2022 passed by the Additional Commissioner, of State Tax (Appeals), Patna West Division, Patna, in Appeal Case Nos. GST/PS-26/2021-22, GST/PS-27/2021-22, GST/PS-28/2021-22, GST/PS-29/2021-22 and GST/PS-30/2021-22 (Annexure-3 series), the appeal of the petitioner against the order dated 5.03.2020 and 07.03.2020 (Annexure-2 series) passed by the Respondent No. 4, namely the Deputy Commissioner of State Tax, Patna South Circle, Patna, in GSTIN: 10ACIFS2889P1ZH has been rejected without complying with the principles of natural justice. Also, the impugned order is an ex parte order.

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 28.02.2022 passed by the Additional Commissioner, of State Tax (Appeals), Patna West Division, Patna, in Appeal Case Nos. GST/PS-26/2021-22, GST/PS-27/2021-22, GST/PS-28/2021-22, GST/PS-29/2021-22 and GST/PS-30/2021-22 (Annexure-3 series); order dated 5.03.2020 and 07.03.2020 (Annexure-2 series) passed by the Respondent No. 4, namely the Deputy Commissioner of State Tax, Patna South Circle, Patna, in GSTIN: 10ACIFS2889P1ZH;

(b) The petitioner undertakes to deposit ten per cent of the amount of the demand raised before the Assessing Officer, over and above the amount already deposited 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 16th of May, 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 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	28.04.2022
Transmission Date	