IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4808 of 2022

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Pradeep Kumar Singh, Son of Rajeshwar Prasad Singh, Resident of Bajitpur, Ward No.- 4, Police Station- Triveniganj, Dist.- Supaul.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Additional Chief Secretary Department of State Tax, Bihar, Patna.
3. The Additional State Tax Commissioner Purnea.
4. The Joint Commissioner State Tax Supaul Anchal, Supaul.
5. The Deputy Commissioner of State Tax Supaul.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Rajesh Kumar Sinha, Advocate
For the Respondent/s : Mr.Vivek Prasad (GP 7)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-04-2022

Heard learned counsel for the parties.

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

"1(i) For quashing the order of demand/notice dated 19.01.2020 issued by the Deputy Commiossioner, Supaul in Reference No.- ZD1001210176174 which has been issued without giving opportunity of hearing to the petitioner by which the GST has been calculated and assessed the finance year and month October 2019 to March 2020 which is not sustainable in the eye of law and fit to be set aside.

(ii) Further for quashing the impugned demand order dt. 19.01.2021 passed by the Joint Commissioner State Tax, Supaul in Reference No. ZD1001210176174 whereby and whereunder the petitioner has been directed to deposit the Tax CGST and SGST alongwith interest and pending without giving opportunity of hearing to the petitioner which is not sustainable in the eye of law and fit to be set aside.

(iii) Further for a direction to the respondent to defreeze/dehold/unhold the accounts of the petitioner. Which has been hold by the impugned order dt. 28.02.2022 issued by the Joint Commissioner State Tax, Supaul which is not sustainable in the eye of law and may be quashed which are being given here in below :-

(a) AC. NO. 11727351500, SBI, Triveniganj in which Home Loan EMI is going on.

(b) AC. No.-449610100000911, Bank of India, Supaul by which business is running.

(c) AC. No.-150102000000073, IDBI, Supaul which current credit account which also for business purpose.

(d) AC. No. - 458330100000076, Bank of India, Triveniganj Loan Account which for business transaction is going on.

(iv) To grant any other relief(s) for which the petitioner is entitled to get in the eye of law."

Petitioner has prayed for quashing of the impugned demand notice dated 19.01.2021 passed by the Deputy Commissioner of State Tax, Supaul in Reference No. ZD1001210176174; summary of the order in Form GST DRC-07 dated 19.01.2021 passed in Reference No.

ZD1001210176174; order dated 28.02.2022, passed by Joint Commissioner State Tax, Supaul Anchal, Supaul.

The orders were *ex parte* in nature.

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 demand notice dated 19.01.2021 passed by the Deputy Commissioner of State Tax, Supaul in Reference No. ZD1001210176174; summary of the order in Form GST DRC-07 dated 19.01.2021 passed in Reference No. ZD1001210176174; order dated 28.02.2022, passed by Joint Commissioner State Tax, Supaul Anchal, Supaul;

(c) The petitioner undertakes to deposit twenty per cent of the amount of the demand raised before the Joint Commissioner State Tax, Supaul Anchal, Supaul (Respondent No. 4). 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 i.e. the Joint Commissioner State Tax, Supaul Anchal, Supaul (Respondent No. 4). 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 i.e. the Joint Commissioner State Tax, Supaul Anchal, Supaul (Respondent No. 4) on 2nd 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)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	20.04.2022
Transmission Date	