IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5007 of 2022

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M/s Durga Trading Company a proprietorship firm having its place of business at Naya Bazar, Nariyar Road, Saharsha, Bihar- 852201 through its proprietor namely Rajkishor Jaiswal male aged about 54 years son of Ramnath Jaiswal resident of Flat No. 304, B.P. Complex, Opp. Om Vihar, Kadamkuan, Patna- 800003.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeals), Purnea Division, Purnea.
3. The Assistant Commissioner of State Taxes, Saharsha Circle, Saharsha.
4. The Joint Commissioner of State Taxes, Saharsha Circle, Saharsha.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
Mr. Mukund Kumar, Advocate
Mr. Harshit Gupta, Advocate
Mr. Alok Kumar Jha, 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):-

a) For issuance of writ or order in the nature of certiorari for quashing of the appellate order dated 06.03.2021 issued vide memo number 408 Purnea passed by the respondent number 2 whereby the appeal preferred by the petitioner under section 107 of the Central Goods And

Services Tax Act 2017 (hereinafter referred to as the Central act 2017 for short) and Bihar Goods And Services Tax Act, 2017 (hereinafter referred to as the Bihar act 2017 for short);

b) For further issuance of a writ in the nature of certiorari for quashing of the ex parte order dated 06.02.2021 and the summary of order issued in form GST DRC – 07 dated 06.02.2021 passed and issued by the respondent No. 3 under section 74 of the central act 2017 and Bihar act 2017;

c) For further issuance of a writ in the nature of certiorari for quashing of the notice of demand dated 26.02.2022 issued by the respondent number 4 and served upon the banker of the petitioner for recovery of the part of the amount in demand for being consequential to the illegal and erroneous order passed by the respondent number 2 and 3;

d) For further restraining the respondents from taking any coercive action against the petitioner for recovery of the amount of tax and interest and penalty in terms of the impugned orders during the pendency of the present writ application and for a direction for refund of the amount already recovered in terms of the impugned orders as such action would be consequential to the impugned orders which are illegal and invalid in the eye of law;

e) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case.

Petitioner has prayed for quashing of the order dated 06.03.2021 passed by Respondent No. 2, namely the

Additional Commissioner of State Taxes (Appeals), Purnea Division, Purnea in Appeal Case No. (ARN) AD1002210047025 (Annexure-5); order dated 08.03.2021 in Form GST APL-4 in Order No. ZD1003210016392 (Annexure-5/A); order dated 06.02.2021 passed by the Assistant Commissioner of State Taxes, Saharsa Circle, Saharsa in Reference No. ZD100221005190M; summary of the order in Form GST DRC-07 dated 06.02.2021 passed by the Respondent No. 3 namely the Assistant Commissioner of State Taxes, Saharsa Circle, Saharsa as also the notice of demand dated 26.02.2022 by the Respondent No. 4 namely the Joint Commissioner of State Taxes, Saharsa Circle, Saharsa. 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 order dated 06.03.2021 passed by Respondent No. 2, namely the Additional Commissioner of State Taxes (Appeals), Purnea Division, Purnea in Appeal Case No. (ARN)

AD1002210047025 (Annexure-5); order dated 08.03.2021 in Form GST APL-4 in Order No. ZD1003210016392 (Annexure-5/A); order dated 06.02.2021 passed by the Assistant Commissioner of State Taxes, Saharsa Circle, Saharsa in Reference No. ZD100221005190M; summary of the order in Form GST DRC-07 dated 06.02.2021 passed by the Respondent No. 3 namely the Assistant Commissioner of State Taxes, Saharsa Circle, Saharsa as also the notice of demand dated 26.02.2022 by the Respondent No. 4 namely the Joint Commissioner of State Taxes, Saharsa Circle, Saharsa;

(b) We accept the statement of the petitioner that ten per cent of the total amount, being condition prerequisite for hearing of the appeal, already stands deposited. If that were so, well and good. However, if the amount is not deposited for whatever reason(s), same shall be done before the next date;

(c) Further the petitioner undertakes to additionally deposit ten per cent of the amount of the demand raised before the Assessing Officer. 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. 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)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	28.04.2022
Transmission Date	