IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5403 of 2022

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M/S Sonal Agencies, Through its Proprietor, Sanjay Kumar, S/O Ramchandra Singh, aged 46 years, Male, resident of ward no. 08 Dih, Sasauna, Samastipur, Gauspur Sasauna, Samastipur.

... ... Petitioner/s

Versus

1. The State of Bihar Through the Commissioner of State Tax, Bihar, New Secretariat, Patna.
2. The Commissioner of State Tax, Bihar, New Secretariat, Patna.
3. The Additional Joint Commissioner of State Tax (Appeal), Darbhanga Division, Darbhanga.
4. The Joint Commissioner of State Tax, Samastipur Circle, Samastipur.
5. The Assistant Commissioner of State Tax, Samastipur Circle, Samastipur.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mrs. Archana 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):-

a) For issuance of writ of Certiorari , quashing appellate order dated 28.7.2021 (Annexure- 2) issued by Respondent no 3 without considering the invoices relied and filed by the Petitioner for taking valid Input tax credit of Rs 191653.05/- and violated the principles of natural justice and further quashing of order dated 12.03.20 (Annexure-1) by which tax of Rs 191653.05 CGST ,RS.191653.05 SGST , CESS 167169.2 interest of Rs 35033.13 CGST , RS . 35033.13 SGST and penalty of Rs 19165.30 SGST , RS. 19165.30 CGST was imposed under Sec 73(1), 73(9) of Bihar Goods and Service Tax Act .

b) For defeeze the bank account no.31190200000277 of BANK OF BARODA SAMASTIPUR , BANK ACCOUNT NO. 31190200000277 AND SBI TAJPUR SAMASTIPUR ACCOUNT NO. 3193499993.

c) For any other consequential relief or reliefs for which the petitioner is found entitled during course of hearing of this writ petition.

It is brought to our notice that vide impugned order dated 28.07.2021 passed by Respondent No. 3 namely Additional Commissioner of State Tax (Appeal), Darbhanga Division, Darbhanga, in Appeal Case No. AD1004210023229 (Annexure-2), the appeal of the petitioner against the order dated 12.03.2020 passed by the Respondent No. 5 namely Assistant Commissioner of State Tax, Samastipur Circle, Samastipur (Annexure-1) and Summary of the order in Form GST DRC-07 dated 15.03.2020 in Reference No. ZA100320018111T has been rejected merely on the grounds of non-filing of certified copy. The order of assessment has been passed violating 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 28.07.2021 passed by Respondent No. 3 namely

Additional Commissioner of State Tax (Appeal), Darbhanga Division, Darbhanga, in Appeal Case No. AD1004210023229 (Annexure-2), order dated 12.03.2020 passed by the Respondent No. 5 namely Assistant Commissioner of State Tax, Samastipur Circle, Samastipur (Annexure-1) and Summary of the order in Form GST DRC-07 dated 15.03.2020 in Reference No. ZA100320018111T;

(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 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)

P.K.P./Amrendra

AFR/NAFR	
CAV DATE	
Uploading Date	19.04.2022
Transmission Date	