IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5478 of 2022

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M/s Laxmi Enterprises, a proprietary concern having its office at Boring Canal Road, Patna, Bihar, 800001 through its Proprietor namely Satish Kumar Sinha, aged about 66 years, Gender-Male, Son of Sri Saryug Narayan, resident of B-151, Budha Colony, Police Station - Budha Colony, Patna - 800001.

... ... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary - Cum - Commissioner of Taxes, Patna having its office at Vikas Bhawan, Patna.
2. The Assistant Commissioner of Commercial Taxes, Patna Central Circle, Patna.
3. The State Bank of India, through its Branch Manager, State Bank of India, East Boring Canal Road Branch, Patna, Bihar, PIN - 800001.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mukesh Kant, Advocate Mr. Manish Kumar, Advocate Mr. Sudarshan Kumar, Advocate
For the Respondent/s	:	Mr. Vikash Kumar (SC-11) Mr. Binod Bihari Sinha, Advocate Mr. Apurv Harsh, Advocate

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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 a writ in the nature of certiorari for quashing of the notice cum demand DRC-01 issued under section 73(1) whereby the Petitioner has been ordered to deposit the amount of Rupees 519365 under CGST and rupees 519365 towards SGST ,thus total amounting to Rs 1038730 plus interest for the period of April 2019 to March 2020.

b) For issuance of a writ in the nature of certiorari for quashing the order issued under section 73(9) by which interest plus penalty of Rs 11,42, 603 has been imposed on the petitioner.

c) For issuance of a writ in the nature of mandamus for directing the Tax authorities to restore the GST registration of the Petitioner.

d) For issuance of writ in the nature of mandamus to the respondent to set off the amount claimed under the notice from the excess taxes deposited by the Petitioners.

e) For issuance of a writ in the nature of mandamus to the Branch Manager, State Bank of India, East Boring canal road for de-freezing the Bank Account no 10626584311 of the Petitioner which has been freezed pursuant to the notice issued under section 79(1)© of the BGST Act.

Petitioner has prayed for quashing of the notice cum demand DRC-01 dated 26.12.2020 issued under Section 73(1) of the BGST Act by the Assistant Commissioner of State Taxes, Patna Central Circle, Patna (Annexure-2) as also the order issued under Section 73(9) of the BGST Act by Respondent No. 2 namely Assistant Commissioner of State Taxes, Patna Central Circle, Patna (Annexure-4).

The orders are *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 notice cum demand DRC-01 dated 26.12.2020 issued under Section 73(1) of the BGST Act by the Assistant Commissioner of State Taxes, Patna Central Circle, Patna (Annexure-2), order issued under Section 73(9) of the BGST Act by Respondent No. 2 namely Assistant Commissioner of State Taxes, Patna Central Circle, Patna (Annexure-4);

(b) 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 with the authority. 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 2nd 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)

P.K.P./Amrendra

AFR/NAFR	
CAV DATE	
Uploading Date	19.04.2022
Transmission Date	