**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.5499 of 2022**

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Ritu Jha D/o Sri Madneshwar Jha, Resident of D.B. Road, P.S. Saharsa, District- Saharsa.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Principle Secretary, Department of Commercial and Tax, Bihar, Patna.
3. The Commissioner State Tax, Bihar, Patna.
4. The Additional Commissioner State Tax, Purnea.
5. The Deputy Commissioner of State Tax, Saharsa.
6. The Assistant Commissioner State Tax, Saharsa.
7. The Joint Commissioner of State Tax, Saharsa.

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Rajesh Kumar Sinha, 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 : 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 19.02.2020 passed/issued in Reference No. ZA10022002-1435K for financial year 2018-2019 (Oct-2018 to March-2019) order u/s 73 of the Bihar GST Act, 2017 passed by the Assistant Commissioner of State Tax, Saharsa, Purnea.

(ii) Further for quashing the impugned order of demand dated 23.01.2021 passed/issued under Rule 142(5), passed by the Assistant Commissioner of State Tax, Saharsa, Purnea in Reference No.

ZD100121020554D which has been made on gross payment which is not sustainable in the eye of law.

(iii) Further for quashing the impugned demand/notice dated 04.10.2021 passed in Reference No. ZD1010210-017965, u/s 73 of the Bihar GST Act, 2017 for financial year 2020-2021 (April 2020 to March 2021) which has been assessed and made 12% GST on gross income which is also not sustainable and fit to be quashed.

(iv) Further for a direction to the respondent to defreeze/release/de-hold the Bank Accounts of the petitioner which has been directed to be hold/freeze by the respondents.

(v) Further for a direction to the respondent Joint Commissioner, State Tax, Saharsa, to re-assessed the tax after being given proper opportunity to the petitioner.

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

Petitioner has prayed for quashing of the impugned order dated 19.02.2020 passed by the Assistant Commissioner of State Tax, Saharsa, Purnea in Reference No. ZA100220021435K (Annexure-1); summary of the order in Form GST DRC-07 dated 19.02.2020 passed in Reference No. ZA100220021435K; order of demand dated 23.01.2021 passed by Assistant Commissioner of State Tax, Saharsa, Purnea, Bihar in Reference No. ZD100121020554D (Annexure-2);

impugned demand/notice dated 04.10.2021 passed by Assistant Commissioner of State Tax, Saharsa, Purnea, Bihar in Reference No. ZD1010210017965 (Annexure-3).

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 19.02.2020 passed by the Assistant Commissioner of State Tax, Saharsa, Purnea in Reference No. ZA100220021435K (Annexure-1); summary of the order in Form GST DRC-07 dated 19.02.2020 passed in Reference No. ZA100220021435K; order of demand dated 23.01.2021 passed by Assistant Commissioner of State Tax, Saharsa, Purnea, Bihar in Reference No. ZD100121020554D (Annexure-2); impugned demand/notice dated 04.10.2021 passed by Assistant Commissioner of State Tax, Saharsa, Purnea, Bihar in Reference No. ZD1010210017965 (Annexure-3);

(c) The petitioner undertakes to deposit twenty per cent of the amount of the demand raised before the Assessing Officer i.e. The Joint Commissioner of State Tax, Saharsa (Respondent No. 7). 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 of State Tax, Saharsa (Respondent No. 7). 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 of State Tax, Saharsa (Respondent No. 7) 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

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| **AFR/NAFR** | |
| **CAV DATE** | |
| **Uploading Date** | 19.04.2022 |
| **Transmission Date** | |