IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6081 of 2022

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Priya Devi, Wife of Sri Deepak Kumar, Resident of Ward No. 3 Shankar Saraiya, Fateh Tola, P.S. - Turkauliya, District - East Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar, through the Principal Chief Commissioner, State Tax, Bihar, Patna.
2. The Principal Chief Commissioner, State Tax, Bihar, Patna.
3. The Chief Commissioner, State Tax, Bihar, Patna.
4. The Joint Commissioner, State Tax, Motihari Circle, Motihari.
5. The Assistant Commissioner, State Tax, Motihari Circle, Motihari.
6. The Deputy Commissioner, State Tax, Motihari Circle, Motihari.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ranjeet Kumar, 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).

i. For setting aside the order dated 05.03.2020, passed by the Joint Commissioner of State Tax, Motihari Circle, Motihari under Section 74 of the Bihar Goods and Services Tax Act, 2017 whereby tax, interest and penalty of Rs. 2,95,394/- has been imposed for the months of Oct`2018 to March`2019.

ii. For setting aside the order dated 09.01.2021 passed by Assistant Commissioner of State Tax, Motihari, whereby Tax, interest and Penalty has been imposed under Section 74 of the BGST for Rs. 267730 for the month of Oct 2019-March 2020.

iii. For setting aside DRC 07 dated 05.03.2020 for Rs. 02,95,394/- for the months of Oct`2018 to March`2019.

iv. For setting aside DRC 07 Dated 09.01.2021 for Rs. 267730.00 for the months of Oct 2019 to March 2020.

v. For that petitioner further prays that after setting aside the aforementioned impugned orders and DRC 07, the matter may be remanded back to the assessing authority to consider the matter afresh after providing opportunity of hearing to the petitioner ***for the reason the petitioner subsequently filled up all its return for the month of October, 2018 to March 2019,*** April 2019 to Sep`2019 and Oct 2019-March 2020 ***and after calculation all its tax, interest and penalty on the basis of return deposited the same.***

vi. For any other relief for which the petitioner may be deemed entitled to.

Petitioner has prayed for quashing of the order dated 05.03.2020 passed by the Respondent No. 4 namely Joint Commissioner of State Tax, Motihari Circle, Motihari in Reference No. ZA100320005081T; Summary of the order in Form GST DRC-07 dated 05.03.2020 (Annexure-3); order dated 09.01.2021 passed by the Assistant Commissioner of State Tax, Motihari, Bihar in Reference No. ZD100121007729Z and summary of the order in Form GST DRC-07 dated 09.01.2021 (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 dated 05.03.2020 passed by the Respondent No. 4 namely Joint Commissioner of State Tax, Motihari Circle, Motihari in Reference No. ZA100320005081T; Summary of the order in Form GST DRC-07 dated 05.03.2020 (Annexure-3); order dated 09.01.2021 passed by the Assistant Commissioner of State Tax, Motihari, Bihar in Reference No. ZD100121007729Z and summary of the order in Form GST DRC-07 dated 09.01.2021 (Annexure-4);

(b) We accept the statement of the petitioner that more than 75 per cent of the amount in terms of the demand raised by the respondents stands deposited.

(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 16th 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)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	