IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9184 of 2022

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Pawan Kumar Agarwal (HUF) Caltex Chowk, Purab Palli Road, Kishanganj, District Kishanganj throughi ts KARTA Pawan Kumar Agarwal.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner State Tax cum Secretary, Bihar, Department of Commercial Tax, New Secretariat, Patna.
2. The Additional Commissioner State Tax (Appeal), Purnea Division, Purnea.
3. The Deputy Commissioner of State Tax, Kishanganj, Purnea, Bihar.
4. The Executive Engineer, Rural Works Department, Works Division, Kishanganj-1, District Kishanganj.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Ramesh Kumar Agrawal, 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 : 14-07-2022

Petitioner has prayed for the following relief(s):-

> "(i) For issuance of an appropriate writ(s), order(s), or direction(s) in the nature of writ of certiorari quashing the order and demand notice both dated 27.02.2020 (Collectively) passed/issued by the respondent Deputy Commissioner of State Tax, Kishanganj, Purnea under Section 73 of the Bihar Goods and Service Tax Act, 2017 (hereinafter referred to as 'the BGST Act, 2017 only) read with Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'the CGST Act, 2017 only) for the

period from October 2018 to March 2019 by which Rs. 1,58,742/- has been assessed as tax, Rs. 9,526/- has been assessed as interest and Rs. 20,000/- has been imposed as penalty. Thus, total demand of Rs. 1,88,268/- has been created.

(ii) For issuance of an appropriate writ, order, or direction for quashing the appellate order dated 04.10.2021 (Annexure-5) passed by the Appellate Authority that is Additional Commissioner of State Tax (Appeal), Purnea Division, Purnea by which time, petition filed by the petitioner has been rejected without considering properly letter dated 18.09.2021 (Annexure-3) issued by the Executive Engineer, Rural Works Department, Works Division, Kishanganj-1.

(iii) For issuance of an appropriate writ, order, or direction for restraining the respondents from initiating any recovery proceedings against the petitioner as demanded by the respondents by the aforesaid demand notice.

(iv) For issuance of an appropriate writ, order, or direction restraining the respondents from taking or initiating any coercive action against the petitioner and or its agents/officials etc. and

(v) To grant such other consequential relief(s) to the petitioner, which this Hon'ble Court may find the petitioner to be entitled to in equity and/or in law in the facts and circumstances of the case."

It is brought to our notice that vide impugned order dated 04.10.2021 passed by the Respondent No. 2 namely the Additional Commissioner of State Tax (Appeal), Purnea Division, Purnea, in Case No.(ARN) AD1007210006861, the appeal of the petitioner against the order dated 27.02.2020 passed by Respondent No. 3, namely the Deputy Commissioner of State Tax, Kishanganj, Purnea, Bihar, under Section 73 of BGST Act, 2017; for the period October, 2018 to March, 2019, has been rejected without consideration of relevant materials on record.

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 and the limitation shall not be allowed to come in the way. 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 sufficient reasons 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; (c) 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 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 04.10.2021 passed by the Respondent No. 2 namely the Additional Commissioner of State Tax (Appeal), Purnea Division, Purnea, in Case No.(ARN) AD1007210006861, and the order dated 27.02.2020 passed by Respondent No. 3, namely the Deputy Commissioner of State Tax, Kishanganj, Purnea, Bihar, under Section 73 of BGST Act, 2017;

(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 August, 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 sands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, also 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)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	21.07.2022
Transmission Date	