IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12052 of 2022

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M/s Kanhaiya Singh Vision classes a partnership firm having its place of business at in front of gate number 2, Kendriya Vidyalya, C/o Rohit Kumar, A/3, Sachiwalay Colony, Kankar Bagh, Patna-800020 through its partner namely Rohit Kumar male aged about 35 years son of Shri Ashok Jain resident of Bimla Kunj, Riverside Road, Near Kiran Cinema, Inside Rai Saheb Phatak, Gaya.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeal) Patna West Division, Patna.
3. The Assistant Commissioner of State Taxes, Patna South Circle, Patna (April 2018 to May 2018).

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate
		Mr.Atal Bihari Pandey, Advocate
For the Respondent/s	:	Mr.Vivek Prasad (GP7)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-08-2022

Petitioner has prayed for the following relief(s):

> “a) For issuance of a writ in the nature of certiorari for quashing of the ex parte appellate order dated 09.01.2021 issued vide

memo number 24 by the respondent number 2 in Appeal Case Number GST/PS – 6/2019-20 whereby the appeal preferred by the petitioner against the order dated 20.02.20219 passed by the respondent No. 3 under Section 74 of the Bihar Goods And Services Act 2017 (hereinafter referred to as the Bihar act 2017 for short) and the summary of order issued in form GST DRC-07 dated 28.02.2019 has been rejected;

b) For issuance of writ in the nature of certiorari for quashing of the ex parte order dated 20.02.2019 passed and summary of the order in form GST DRC – 07 dated 28.02.2019 issued by the respondent No. 3 whereby liability of tax, penalty and interest has been imposed in a proceeding under section 74 of the Bihar Act 2017 for the tax period April 2018 to May 2018;

c) For further issuance of a writ in the nature of certiorari for quashing of the notice issued in form GST DRC -13 dated 04.08.2022 vide process number 1377 whereby the bank account of the petitioner has been attached in exercise of powers under section 79 of the central goods and services tax act 2017 (hereinafter referred to as the central act 2017 for short) read with Bihar act 2017 by the respondent number 3 which is consequential to the impugned ex parte order of assessment dated 20.02.2019;

d) For further restraining the respondents from making recovery of the amount of tax, interest and penalty imposed and raised in terms of the impugned order dated 20.02.2019 passed by the respondent number 3;

e) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of the case."

It is brought to our notice that vide impugned order dated 09.01.2021 passed by the Respondent No. 2 namely the Additional Commissioner of State Taxes (Appeal), Patna West Division, Patna, in Appeal Case No.GST/PS-6/2019-20, Memo No.24, the appeal of the petitioner against the order dated 20.02.2019 passed by Respondent No. 3, namely The Assistant Commissioner of State Taxes, Patna South Circle, Patna, under Section 74 of BGST Act, 2017; and summary of orders dated 28.02.2019 and 04.08.2022 in Form GST DRC-07 and Form GST DRC 13 respectively for the period April, 2018 to May, 2018 has been rejected. Both 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 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 09.01.2021 passed by the Respondent No. 2 namely the Additional Commissioner of State Taxes (Appeal), Patna West Division, Patna, in Appeal Case No.GST/PS-6/2019-20, Memo No.24, and the order dated 20.02.2019 passed by Respondent No. 3, namely The Assistant Commissioner of State Taxes, Patna South Circle, Patna, under Section 74 of BGST Act, 2017; and summary of orders dated 28.02.2019 and 04.08.2022 in Form GST DRC-07 and Form GST DRC 13;

(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 19th of September, 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)

(Satyavrat Verma, J)

K.C.Jha/DKS

AFR/NAFR	
CAV DATE	
Uploading Date	26.08.2022
Transmission Date	