IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12550 of 2022

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Santosh Kumar Choudhary Son of Pashupati Nath Choudhary, Resident of Ward No.-08, Mahishi North, P.S.-Mahishi, District-Saharsa.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Commercial and Tax, Bihar, Patna.
3. The Commissioner State Tax, Bihar, Patna.
4. The Assistant Commissioner State Tax, Saharsa.
5. The Joint Commissioner State Tax, Saharsa.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Sinha, 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 : 01-09-2022

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

i. For a direction to restore the GST 10AJGPC1961KZZL of the petitioner which has been cancelled by the respondent without giving opportunity of hearing to the petitioner.

ii. Further for quashing the demand notice as contained in reference no. ZD100121023522H dated 27.01.2021 and Reference No.-ZD101021001823G dated 04.10.2021 issued by The Assistant Commissioner of State Tax, Saharsa, Bihar, whereby and whereunder demand for GST @ 12% have been made with fine and penalty for financial year 2019-20 (01.04.2019 to 31.03.2020) and giving opportunity of hearing which are not sustainable and fit to be set aside.

iii. Further for a direction to the respondent authority to defreeze/ dehold/un-hold the Account No.-32890565526, IFSC Code-SBIN0014333, State Bank of India, Mahishi which has been hold by the respondent authority on the ground of non-payment of their demand under G.S.T.

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

This petition has been filed for quashing demand notice as contained in Reference No. ZD100121023522H dated

27.01.2021 and Reference No. ZD101021001823G dated 04.10.2021 issued by the respondent no. 4 namely The Assistant Commissioner of State Taxes, Saharsa for the period 2019-20. The order is *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. 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 demand notice as contained in Reference No. ZD100121023522H dated 27.01.2021 and Reference No. ZD101021001823G dated 04.10.2021 issued by the respondent no. 4 namely The Assistant Commissioner of State Taxes, Saharsa for the period 2019-20;

(b) The petitioner undertakes to deposit 20% of the amount of the demand raised before the Assessing Officer. This shall be done within eight 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 had already deposited up to the extent of twenty percent, the same shall be set off against the amount to be deposited. Also, if the deposit is found to be 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 19.09.2022 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) 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;

(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 assessment, no coercive steps shall be taken against the petitioner.

(j) The Assessing Officer 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 Officer 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 Officer 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 before this Court, 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 reasonable dispatch;

(q) We have not expressed any opinion on merits and all issues are left open;

(r) If possible, proceedings 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)

Sujit/-

AFR/NAFR	
CAV DATE	
Uploading Date	05.09.2022
Transmission Date	