IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13194 of 2022

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SKS Construction a proprietorship firm having its place of business at, Bekapur, Munger 811201 through its authorised representative namely Asgar Ali male aged about 32 years son of Manauwar Hussain Ansari, resident of near Masjid, Baniapur, Dhagaraha, Saran.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Assistant Commissioner of State Taxes, Bhagalpur Circle, Bhagalpur. January 2021 to March 2021.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Gautam Kumar Kejriwal, Advocate

For the Respondent/s : Mr.Vikash Kumar (S.C. 11)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-10-2022

Petitioner has prayed for following relief(s) : -

> a) For issuance of a writ in the nature of certiorari for quashing of the ex-parte order dated 27.10.2021 issued by way of summary of order in Form GST DRC-07 by the respondent number 2 in exercise of power under Section 62 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the “central act 2017” for short) read with Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as the “Bihar Act, 2017” for short);
>
> b) For further issuance of a writ in the nature of certiorari for quashing of the notice of demand issued in form GST DRC -13 dated 21.07.2022 by the respondent number 2 in exercise of powers under Section 79 of the Central Act, 2017 on grounds of the same being ex parte and also being

an action in sequel to the impugned ex parte order dated 27.10.2021 passed against the petitioner;

c) For further issuance of an appropriate writ or order or direction restraining the respondent number 2 or any other authority of the respondent Department of Goods And Service Tax from taking any coercive action for recovery of the amount of tax and interest in terms of the impugned order passed by the respondent number 2;

d) For holding and a declaration that the statutory return in form GSTR-3B filed by the petitioner for the quarter of January 2021 to March 2021, though with some delay, is valid and the declaration made therein by the petitioner holds primacy over the figures determined by the respondent number 2 in terms of the best judgement assessment made under Section 62 (1) of the Goods And Services Tax Act, 2017 (hereinafter referred to as "the act" for short);

e) For further holding and a declaration that Section 16 (2), 16 (4), 39 read with Section 46 and 47 of the central act 2017 permits filing of a return after due date and imparts all characteristics of a return valid and acceptable in terms of law;

f) For further holding a declaration that the nature of jurisdiction conferred under Section 62 (1) of the act to make a best judgment assessment of an assesse having defaulted in filing a monthly return is not penal in nature rather it is a discretionary power exercisable to fill up the gap in the records maintained for the sale purchase turnover, tax liability admitted and paid and input tax credit to which an assesse may be entitled to for a particular period and therefore once a valid return is filed by the assesse even after due date but with due compliance of Section 47 of the central act 2017, the best judgement assessment made under section 62 (1) shall have to be recalled and the return so filed would be required to be considered by the assessing authority;

g) For further holding and a declaration that section 62 (2) of central act 2017 is directory and

> not mandatory and therefore any return validly filed in terms of section 39 read with section 47 shall replace the best Judgement assessment made under Section 62 (1) irrespective of the bar of limitation prescribed under section 62 (2);
>
> h) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case."

It is brought to our notice that vide impugned order dated 27.10.2021 passed by the Respondent No. 2, namely the Assistant Commissioner of State Taxes, Bhagalpur Circle, Bhagalpur, issued in Form GST DRC-07, the input tax credit claim of the petitioner has been rejected and tax amounting to Rs. 999,787/-, and interest for Rs.104,977/- has been imposed, without providing any further notice to the petitioner.

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 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. 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 27.10.2021 passed by the Respondent No. 2, namely the Assistant Commissioner of State Taxes, Bhagalpur Circle, Bhagalpur, issued in Form GST DRC-07 as also the notice of demand issued in Form GST DRC-13 dated 21.07.2022;

(b) The petitioner undertakes to deposit twenty per cent of the amount of the demand raised before the Assessing Officer. This shall be done within four 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’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 02.11.2022 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;

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/-DKS

AFR/NAFR	
CAV DATE	
Uploading Date	16.10.2022
Transmission Date	