

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13006 of 2022

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M/s. K.K.K.O. Brand having its registered office at Bansidehri, Sahar, Bhojpur, Bihar- 802208 through its Proprietor namely, Nand Kishor Singh, Male, aged about 67 years, S/o Dudhnath Singh, Resident of Ward No. 9, Karvasin, Bhojpur, Bihar- 802201.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-cum-Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Principal Secretary-cum-Commissioner, Department of State Taxes, Government of Bihar, Patna.
3. The Assistant Commissioner of State Tax, Shahabad Circle, Ara.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Pawan Kumar Singh, 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 05.02.2021 and summary of order in Form GST DRC-07 dated 05.02.2021 issued under Section 73(9) of the Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as the BGST Act) and u/r 142(5) of Bihar Goods and Services Tax Rules, 2017 (hereinafter referred to as the BGST Rules);

b. For holding and a declaration that the impugned order dated 05.02.2021 passed by the respondent number 3 is highly cryptic, misconceived, nonspeaking and violative of principles of natural justice;



c) For further restraining the respondent number 3 from taking any coercive action against the petitioner for recovery of the amount of tax interest and penalty in terms of the impugned order dated 05.02.2021 during the pendency of the present writ application.

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

It is brought to our notice that vide impugned order dated 05.02.2021 passed by the Respondent No. 3, namely the Assistant Commissioner of State Tax, Shahabad Circle, Ara, and summary of order in Form GST DRC-07 dated 05.02.2021, the input tax credit claim of the petitioner has been rejected and tax amounting to Rs. 46,590/- , including interest and penalty, has been imposed, without providing any opportunity 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 05.02.2021 passed by the Respondent No. 3, namely the Assistant Commissioner of State Tax, Shahabad Circle, Ara, and summary of order in Form GST DRC-07 dated 05.02.2021;

(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 stands 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/chn

AFR/NAFR	
CAV DATE	
Uploading Date	16.10.2022
Transmission Date	

