IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13584 of 2022

M/s Sky S Mart a Proprietorship Firm having its place of business at Main Road, Kalyanpur, Fatuha, Patna through its Proprietor Avinash Kumar, aged about 44 years, Male, son of Sri Kishori Vishwakarma, Resident of B-1/H2, Olive E-Business Solution Pvt. Ltd. Mohan Co-operative Industrial Estate, Jaitpur, P.S. Badarpur, District South Delhi, Delhi-110044, presently residing at Main Road, Kalyanpur, P.S. Fatuha, District Patna.

... ... 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, State Taxes, Government of Bihar, Patna.
3. The Joint Commissioner of State Taxes, Patna City Circle, Commercial Tax Department, Bihar.
4. The Deputy Commissioner of State Taxes, Patna City Circle, Commercial Tax Department, Bihar.
5. The Assistant Commissioner of State Taxes, Patna City Circle, Commercial Tax Department, Bihar.

... ... Respondent/s

Appearance :
For the Petitioner/s : Mr.Mohit Agarwal, Advocate
For the Respondent/s : Mr.Vikash Kumar (SC 11)

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-09-2022

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

> "(a) For quashing of the Order dated 30.11.2021 bearing order No. ZD101121015399Z passed under Section 73(9) of the Bihar GST Act, 2017 and also the Summary of Order (Demand Notice) issued in Form GST DRC-07 dated 30.11.2021 bearing reference No. ZD101121015399Z passed by the Respondent Assistant Commissioner State Tax,

Patna City Circle, Patna for being in teeth of Principles of National Justice as the same was passed without issuance of any Show Cause Notice;

(b) For issuance of direction upon the Respondents to get released the Bank Account of the petitioner firm and its Proprietor which has been attached in the process of recovery of the demand raised under Summary of Order issued in FORM GST DRC 07 dated 30.11.2021 bearing reference No. ZD101121015399Z till fresh adjudication of the matter in issue; and for any other relief(s) for which the Petitioner may legally be found entitled to in the facts & circumstances of the present case."

It is brought to our notice that vide impugned order dated 30.11.2021 passed by the Respondent No. 5, namely the Assistant Commissioner of State Taxes, Patna City Circle, Commercial Tax Department, Bihar, in Reference No. ZD101121015399Z, tax amounting to Rs. 4,61,939/-, including interest and penalty, 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 30.11.2021 passed by the Respondent No. 5, namely the Assistant Commissioner of State Taxes, Patna City Circle, Commercial Tax Department, Bihar, in Reference No. ZD101121015399Z;

(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 10.10.2022 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	26.09.2022
Transmission Date	