IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13569 of 2022

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M/S Kaushal Kishore Singh through its proprietor Kaushal Kishore Singh, male, aged about 70 years, son of Late Ladu Lal Singh, Office at Keshawe, Begusarai, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of State Tax, Bihar, New Secretariat, Patna.
2. The Assistant Commissioner of State Tax, Bihar, Begusarai circle Begusarai.
3. The Joint Commissioner of State Tax, Bihar, Begusarai Circle Begusarai.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mrs.Archana Sinha @ Archana Shahi, Advocate
For the Respondent/s : Mr.Vikash Kumar (SC 11)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-11-2022

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

> "a) For setting aside the order dated 01.02.2021 by which the respondent no. 2 has passed the exparty order without giving proper opportunity to the petitioner to defend his case.
> b) For setting aside the demand notice passed under section 73(1) VAT Act dated 01.02.2021.
> c) For setting aside the order dated 28.2.2022 by which an order was passed to issue notice to the third party for recovery of demand

> (dated 1.2.2021) dated 2.2.2021.
> d) For setting aside the order dated 19.7.2022 by which the letter was issued to third party i.e. INDIAN OLI CORPORATION LTD for recovery of demand of the petitioner.
> e) For DE freezing the bank account SBI KESHAWE branch of the petitioner which was freezed vide order dated 19.7.2022.
> f) For any other consequential relief or reliefs for which the petitioner is found entitled during course of hearing of this writ petition."

It is not in dispute that petitioner preferred an appeal assailing the order dated 01.07.2021 passed by respondent No. 2, namely The Assistant Commissioner of State Tax, Bihar, Begusarai Circle, Begusarai (page-13) and that the said appeal stands dismissed by the Additional Commissioner of State Taxes (Appeal), Darbhanga Division, Darbhanga vide order dated 12.08.2022, passed in Appeal No. AD1007220040308 solely on the ground of limitation (Para-10, page-5).

The order of the appellate authority is taken on record. Evidently, perusal of the said order reveals such fact.

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 01.07.2021 passed by respondent No. 2, namely The Assistant Commissioner of State Tax, Bihar, Begusarai Circle, Begusarai (page-13) and order dated 12.08.2022 by the Additional Commissioner of State Taxes (Appeal), Darbhanga Division, Darbhanga vide, passed in Appeal No. AD1007220040308;

(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 30.11.2022 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;

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)

(Partha Sarthy, J)

K.C.Jha/-DKS

AFR/NAFR	
CAV DATE	
Uploading Date	14.11.2022
Transmission Date	