

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13577 of 2022

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Maa Bhawani Enterprises a proprietorship firm having its place of business at Jafarpur Asli, Phular, District - Muzaffarpur through its proprietor namely Shanker Sah male aged about 59 years son of Mahavir Sah Resident of Jafarpur Asli, Phular, District - Muzaffarpur - 843107.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Joint Commissioner of State Taxes, Muzaffarpur (West). (2018-2019)

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, 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 : 12-10-2022

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

- a) For issuance of writ in the nature of certiorari for quashing of the ex parte order dated 04.03.2020 and the summary of order issued in form GST DRC – 07 in exercise of power under section 73 of the Central Goods and Services Tax Act 2017 (hereinafter referred to as the “central act 2017” for short) by the respondent number 2 raising demand of tax, interest and penalty with respect to financial year 2018 – 2019;
- b) For issuance of a writ or order or direction upon the respondent number 2 to issue and serve a proper notice upon the petitioner and after due hearing of the petitioner and examination of facts and materials as may



be produced and furnished by the petitioner in support of his case
decide the same afresh;

- c) For further restraining the respondents from resorting to any mode of
coercive recovery of the amount of tax, interest and penalty from the
petitioner and its assets in terms of the impugned order;
- d) 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 04.03.2020 passed by the respondent No.2, namely, the Joint Commissioner of State Taxes, Muzaffarpur (West) and summary of order dated 04.03.2020 issued in form GST DRC -07 under Sections 73 of the Central Goods and Services Tax Act 2017, demand of tax, interest and penalty has been raised.

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, 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 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 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 04.03.2020 passed by the respondent No.2, namely, the Joint Commissioner of State Taxes, Muzaffarpur (West) and summary of order dated 04.03.2020 issued in form GST DRC -07;

(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 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 of what would stand adjudicated, 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 01.11.2022 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) 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 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 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 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)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	15.10.2022
Transmission Date	

