IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13940 of 2022

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Rohan Raj Son of Rajeshwar Singh, Resident of Sherpur Maner, Police Station - Maner, District - Patna, the proprietor of Saanvi Automobiles, GSTIN/ID - 10AORPR1596R1Z1, having its place of business at Circle No. 242, Holding No. 475, Ward No. 15, Azad Nagar, Near Petrol Pump, Maner, District - Patna, Bihar 801108.

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary-cum-Commissioner of State Tax, Bihar having its office at Vikas Bhawan, Bailey Road, Patna.
2. The Additional Commissioner of State Taxes (Appeal), Patna West Division, Patna.
3. The Assistant Commissioner of State Tax, Danapur Circle, Danapur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Parijat Saurav, Advocate
For the Respondent/s	:	Mr. Vikash Kumar (Sc11)

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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 reliefs:-

i) For issuance of a writ in the nature of **Certiorari** or any other appropriate writ or order for quashing of the *ex-parte* assessment order-in-original dated 18/02/2021 alongwith order contained in Ref. No. ZD100221014203M dated 27/02/2021 passed under the signature of respondent no. 3 and the consequential demand notice contained in Form GST DRC-07, levying GST amounting to Rs. 6,04,897.20/- (Rs. Six lac, four thousand, eight hundred ninety seven and twenty paise only) alongwith interest of Rs. 1,01,026.12/- (Rs. One lac, one thousand, twenty six and twelve paise only) and penalty of Rs. 60,488/- (Rs. sixty thousand, four hundred and eighty eight only), total amounting to Rs. 7,66,411.32/- (Rs. Seven lac, sixty six thousand, four hundred eleven and thirty two paise only) for the period April 2019 to March 2020, and be pleased to remand the matter back to the respondent no. 3 for fresh considering after affording the opportunity of hearing to the petitioner.

ii) For directing the respondents to de-freeze the bank accounts of the petitioner, and to refund the sum of Rs. 7,66,411.32/- (dispute demand in full) which has been recovered from the bank account and electronic ledger of the petitioner.

iii) For issuance of any other appropriate writ, order or direction which Your Lordships may deem fit and proper in the facts and circumstances of the case.

It is brought to our notice that vide assessment order-in-original dated 18.02.2021 along with order contained in Ref. No. ZD1002214014203M dated 27.02.2021 passed by the Respondent No. 3 namely the Assistant Commissioner of State Tax and the consequential demand notice contained in Form GST DRC-07, whereby an amount of Rs. 7,66,411.32/- has been levied including interest and penalty for the period April 2019 to March

2020. Orders appear to be *ex parte* in nature.

It is stated across the bar that the entire amount as demanded by the Respondent Department stands deposited/recovered.

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; (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 assessment order-in-original dated 18.02.2021 along with order contained in Ref. No. ZD1002214014203M dated 27.02.2021 passed by the Respondent No. 3 namely the Assistant Commissioner of State Tax and the consequential demand notice contained in Form GST DRC-07;

(b) We accept the statement of the petitioner that the entire amount, as demanded by the respondents Department, stands deposited/recovered. If that were so, well and good. However, if the amount is not deposited for whatever reason(s), the same shall be done before the next date;

(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;

(q) If possible, proceedings be conducted through digital mode;

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)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	17.10.2022
Transmission Date	