IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14044 of 2022

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M/s Chandini Electricals having office at Sri Ram Place, Sahdeo Mahto Marg, Boring Road, S.K. Puri Patna, Bihar- 800001 through its proprietor Mohammad Tahir aged abourt 60 years Male son of Md. Zainul Abdin resident of Ramprit Colony, Sahdeo, Mahto, Margh, Boring Road, P.S. - S.K. Puri, Patna Bihar - 800001.

... ... Petitioner/s

Versus

1. The Commissioner of Central GST and Central Excise Patna- 1, 3rd Floor, Kendriya Rajaswa Bhawan (Annexe Building) Bir, Chand Patel Path, Patna- 800001.
2. The State of Bihar through Secretary cum Commissioner, State Taxes, Government of Bihar, Vikash Bhawan, Bailey Road, Patna - 800001.
3. Joint Commissioner of State Tax, Patna Central Circle, Patna.
4. The Assistant Commissioner of State Tax, Patna Central Division, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Alok Kumar, Advocate
		Mr. Rajeev Shekhar, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC-11
		Dr. K.N. Singh, ASG
		Mr. Anshuman Singh, Sr. S.C. CGST & CX

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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

Heard learned counsel for the parties.

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

i) To issue an appropriate writ, order or direction quashing the order of Assessment dated 30.11.21 passed by Assistant Commissioner of State Tax, Patna Central

Division, Patna, (Annexure-2 to this Writ Application) under Section 73 of the Bihar Goods and Services Act, 2017, Whereby the petitioner's has been assessed ex-parte in Violation of the Principal of Natural Justice.

ii) To issue direction to the authorities concern to de-freeze/de-attach the bank account(s) of the petitioner

iii) To issue direction to the authorities concern not to realize the amount from the bank account(s) of the petitioner in pursuance of the order of Assessment passed under section 73 of the Bihar Goods and Services Act, 2017.

iv) To grant any other relief or reliefs to which the petitioner is entitled in the facts and circumstances of the case.

It is brought to our notice that vide impugned order dated 30.11.2021 passed by the respondent No.4, namely, the Assistant Commissioner of State Tax, Patna Central Division, Patna (Annexure-2) in GSTIN 10ABWPT9826A1ZF whereby a demand notice of Rs.35,21,625/-under DRC-07 has been directed to be issued.

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 30.11.2021 passed by the respondent No.4, namely, the Assistant Commissioner of State Tax, Patna Central

Division, Patna (Annexure-2) in GSTIN 10ABWPT9826A1ZF;

(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 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) 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 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)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	15.10.2022
Transmission Date	