

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14220 of 2022

M/s H.R. Builders Chawahi Takki, Gopalganj, Bihar- 841428 through its Authorized Signatory Sri Hans Raj Dhankar, Aged about 73 years Gender Male, son of Late Bhim Singh, Resident of B/37, Phase-1, Police Station-Ashok Vihar, District- North West, Delhi- 110052. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. The Principal Chief Commissioner, CGST, Central Revenue Building, Birchand Patel Path, Patna.
3. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna.
4. The Secretary, Road Construction Department, Government of Bihar, Patna.
5. The Executive Engineer, Road Construction Department, Gopalganj, District- Gopalganj.
6. The Additional Commissioner, State Tax (Appeals), Saran Division, Chapra.
7. The Joint Commissioner, State Tax, Gopalganj Circle, District- Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Anurag Saurav, Advocate Mr. Awalesh Kumar, Advocate Mr. Alok Kumar, Advocate
For the UOI	:	Mr. Anshuman Singh, SR. SC (GST & CX)
For the State	:	Mr. Vivek Prasad, GP 7

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 relief:-

- (i) For issuance of consequential writ/s or order/s for quashing of summary of order issued in Form GSTR DRC-07 dated 06.03.2020 for the period October 2018 to March 2019 whereby the tax, interest and penalty to the tune of Rs. 42,67,226.80 has been imposed in exercise of power under Section 74 of the GST Act, 2017 in utter violation of the principal of natural justice;



- (ii) For further issuance of consequential writ/s or order/s for quashing of order dated 22.09.2020 issued vide Memo No. 638 dated 22.09.2020 passed by the Respondent No. 6 whereby the appeal preferred by the petitioner has been rejected only on the ground that the petitioner did not filed the certified copy of the Assessment Order within time from of four months, without going into the merit of the case;
- (iii) For further issuance of a direction or order restraining the Respondent No. 7 from taking any coercive action for recovery of the amount in demand from the petitioner during the pendency of the present writ application or for a direction to refund of the part or whole of the amount in case recovered from the petitioner;
- (iv) For a direction to the Respondents for de-freezing/ de-attaching of the Bank Account of the petitioner firm which was attached by the Respondent No. 7;
- (v) For a direction to the Respondent No. 4 and 5 to transfer the amount deducted at source to the credit ledger of the petitioner which is still not deposited by the Respondent No. 5;
- (vi) For grant of any 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



22.09.2020 passed by the Respondent No. 6 namely the Additional Commissioner of State Taxes (Appeals), Saran Division, Chapra in Appeal Case No.AD1009200004950, the appeal of the petitioner against the summary of order dated 06.03.2020 passed by Respondent No. 7, namely The Joint Commissioner of State Taxes, Gopalganj Circle, District-Gopalganj, under Section 74 of GST Act, 2017 in Reference No. ZA1003200084199 for the period October, 2018 to March, 2019 has been rejected on the ground of non-filing of the certified copy of the assessment orders. Both the orders are *ex parte* in nature.

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 22.09.2020 passed by the Respondent No. 6, namely, the Additional Commissioner of State Taxes (Appeals), Saran Division, Chapra in Appeal Case No. AD1009200004950 and the summary of order dated 06.03.2020 passed by the Respondent No. 7, namely, The Joint Commissioner of State Taxes, Gopalganj Circle, District-Gopalganj in Reference No. ZA1003200084199;

(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 03.11.2022 at 10:30 A.M.

(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;

(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)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	20.10.2022
Transmission Date	

