IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14216 of 2022

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M/s National Construction Kurji Nalanda Nagar, Gate No. 1, Sadakat Ashram, Patna, Bihar through its Proprietor Akhtar Hussain, Aged about 59 years, Gender Male, son of Md. Ali Hussain, Resident of Nalanda Nagar, Gate No. 1, Sadakat Ashram, P.S. Patliputra Colony, District- Patna. ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Tax (Appeals), Patna West Division, Patna.
3. The Joint Commissioner, State Tax, Patna Central Circle, Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Alok Kumar, 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 following relief:-

(i) For consequential writ or order for quashing of order dated 05.09.2022 issued vide Memo No. 1649 dated 05.09.2022 passed by the Additional Commissioner, State Tax (Appeals), Patna West Division, Patna whereby the application filed for Revocation of order of cancellation bearing Appeal Case No. GST/PTC-39/22-23 has been rejected;

(ii) For consequential writ or order for quashing of ex-parte order dated 23.09.2021 passed by the Joint Commissioner of State Tax, Patna Central Circle, Patna whereby the Registration granted under the GST Act, 2017 of the

Petitioner has been cancelled without giving proper opportunity of filing reply and without giving opportunity of hearing;

(iii) For a direction to the Respondent No. 3 to restore the registration granted under GST Act, 2017 of the petitioner firm whereby the registration of the petitioner firm was cancelled by an ex-parte order;

(iv) For a direction to the Respondents for de-freezing/ attaching of the Bank Account of the petitioner firm attached by the Respondents;

(v) For further issuance of a direction restraining the Respondent No. 3 from taking any coercive action for recovery of the amount in demand during pendency of the present writ petition;

(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 05.09.2022 passed by the Respondent No. 2 namely the Additional Commissioner of State Tax (Appeals), Patna West Division, Patna, in Appeal Case No.GST/PST-39/22-23, the appeal of the petitioner against the order dated 23.09.2021 passed by Respondent No. 3, namely The Joint Commissioner of State Tax, Patna Central Circle, Patna, in reference No. ZA100921098740M has been rejected. 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 05.09.2022 passed by the Respondent No. 2 namely the Additional Commissioner of State Tax (Appeals), Patna West Division, Patna, in Appeal Case No.GST/PST-39/22-23 and the order dated 23.09.2021 passed by Respondent No. 3, namely, The Joint Commissioner of State Tax, Patna Central Circle, Patna, in reference No. ZA100921098740M;

(b) Petitioner undertakes to appear before the Assessing Authority on 03.11.2022 at 10:30 A.M., if possible through digital mode;

(c) The Assessing Authority shall decide the case on merits after complying with the principles of natural justice;

(d) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

(e) During pendency of the case, no coercive steps shall be taken against the petitioner.

(f) The Assessing Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(g) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(h) 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;

(i) The Assessing Authority shall pass a speaking order, assigning reasons, copy whereof shall be supplied to the parties;

(j) Liberty reserved to the petitioner to challenge the order, if required and desired;

(k) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(l) 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;

(m) We have not expressed any opinion on merits and all issues are left open;

(n) 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	20.10.2022
Transmission Date	