

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14711 of 2022

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Bijay Kumar Yadav a proprietorship firm having its place of business at Kalyanpur, Ward Number- 1, Supaul, Bihar - 852105 through its proprietor namely Bijay Kumar Yadav alias Vijay Kumar Yadav male aged about 60 years son of Sudi Lal Yadav resident of Ward number 1, P.S.- Bhaptiyahi District- Supaul, Bihar- 852105.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Joint Commissioner of State Taxes, Supaul Circle, Supaul. (April 2021- February 2022).
3. The Joint Commissioner of State Taxes, Investigation Bureau, Purnea.
4. The Assistant Commissioner of State Taxes, Investigation Bureau, Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
For the Respondent/s : Mr. Vikash Kumar (SC 11)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 02-11-2022

Petitioner has prayed for following relief (s):-

“a) For issuance of a writ in the nature of certiorari for quashing of the ex parte order dated 10.06.2022 passed by the respondent no. 2 under section 74 of the Central Goods and Services Tax Act 2017 (hereinafter referred to as the central act 2017 for short was bracket read of the Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as the Bihar act 2017 for



short);

b) For further issuance of a writ or order or direction upon the respondent number 2 to notify the petitioner and award a fresh opportunity of hearing in terms of section 74 of the central act 2017 and after examining the explanation/defence of the petitioner and the documentary evidence is to be produced by the petitioner pass a fresh order as regards determination of liability of the petitioner with respect to financial year 2021-2022;

c) For holding and a declaration that the entire action of the respondent number 2 in determining the liability of tax, interest and penalty against the petitioner followed by issuance of an order under section 74 of the Bihar act 2017 in course of a proceeding initiated under section 129 (4) of the Bihar act 2017 in absence of any of the notices/reminders actually served under section 74 of the Bihar act 2017 is illegal and without jurisdiction;

d) For issuance of a writ or order or direction upon the respondent number 2 to release with immediate effect the electronic credit ledger of petitioner which is lying attached as a consequence of an action taken in terms of section 79 of the central act 2017 for recovery of the amount of tax, interest and penalty in terms of the impugned order dated 10.06.2022;

e) For further issuance of a writ or order or direction restraining the respondent 2 and any other authority executing any of the directions issued by the said respondent from taking any coercive action for recovery of the amount of tax, interest and penalty demand in terms of the impugned order during the pendency of the present writ application and in case any amount is recovered before filing of the instant



application or during the pendency thereof then to refund the same to the credit of the petitioner within a time frame as may be fixed;

f) 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 and summary of order both dated 10.06.2022 passed by the Respondent No. 2, namely the Joint Commissioner of State Taxes, Supaul Circle, Supaul, the input tax credit claim of the petitioner has been rejected and tax amounting to Rs. 1412790.52/-, including penalty, has been imposed, without providing any further notice to the petitioner.

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. 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 and summary of order both dated 10.06.2022 passed by the Respondent No. 2, namely the Joint Commissioner of State Taxes, Supaul Circle, Supaul;

(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'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 30.11.2022 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;

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)

(Partha Sarthy, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	04.11.2022
Transmission Date	

