IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15702 of 2022

Mr. Ajay Kumar-Proprietor Maa Enterprises S/o Sukhdev Mandal Resident of Ghiha, Prasasthdih, P.S.-Goradih, Bhagalpur-813205 (Bihar).

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. Assistant Commissioner of State Tax, Bhagalpur.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Aman Raja, Advocate
		Mr. Sanjeev Kumar, Advocate
		Mr. Ajay Kumar Jha, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC-11

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 02-12-2022

Heard learned counsel for the parties.

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

a. For issuance of a writ in the nature of certiorari for quashing of the order dated 10.01.2022 contained in Annexure- 5 passed by Assistant Commissioner of State Tax Bhagalpur circle Bhagalpur u/s 73 of Bihar GST Act-2017 for the period of 1.4.2020 to 31.03.2021 (2020-2021) and as well as quashing connected demand notice in form GST DRC- 07 dated 10.01.2022 contained in Annexure-5 in pursuance of order dated 10-01-2022 by exercising the powers under section 73 and section 50 of the Bihar Goods And Service Tax Act, 2017 (hereinafter referred to as the Act -2017 for short)

b. For issuance of a writ or order or direction on Respondent No. 2 to award an opportunity of filing the comprehensive reply and also of hearing in the proceeding initiated under section 73 of the act and decide the matter afresh after considering all materials and explanation submitted by the petitioner.

c. For further holding and a declaration that in the undisputed facts and circumstances of this case the petitioner is entitled to an opportunity of submitting its case and also of hearing on the issues of facts and law before any fresh decision is taken by the respondent assessing authority in terms of the provisions of the act.

d. For holding and a declaration that the action of the respondent assessing authority in passing the impugned order along-with a demand notice without issuing the form DRC – 01A and is against the settled principles of law and denial of rights to adequate opportunity of hearing and therefore violates the principles of natural justice

e. To quash the order of the respondent attaching the bank account of the petitioner's establishment and the authority may be directed to release immediately as the same is greatly hindering the ongoing business.

f. For issuance of other writ/ direction(s) while the petitioner may in the fact and circumstances of the case to be found entitled to.

g. For grant such other relief(s) as deem fit and proper by issuing an appropriate writ(s), rule(s) or direction(s) as deem fit and proper.

Petitioner has prayed for quashing of the order dated 10.01.2022 passed by Respondent No. 2, namely, Assistant Commissioner of State Tax, Bhagalpur in Reference No. ZD100122003504H (Annexure-5) as also Summary of the order in Form GST DRC-07 dated 10.01.2022.

The order is *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. 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 reasons sufficient 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. 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.

As such, we dispose of the present writ petition in the following mutually agreeable terms:

(a) We quash and set aside the impugned order dated 10.01.2022 passed by Respondent No. 2, namely, Assistant Commissioner of State Tax, Bhagalpur in Reference No. ZD100122003504H (Annexure-5) as also Summary of the order in Form GST DRC-07 dated 10.01.2022;

(b) 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;

(d) This deposit shall be without prejudice to the respective rights and contentions 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 2nd of January, 2023 at 10:30 A.M., if possible through digital mode;

(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. Also, opportunity to place on record all essential documents and materials, if so required and desired, shall be granted;

(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, shall stand 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)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	06.12.2022
Transmission Date	