IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15599 of 2022

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M/s Aditya Construction Pvt Ltd through its partner, Sri Ashutosh Kumar @ Ashutosh Singh, male, aged about 22 years, son of Arun Kumar Singh, Office at Ward No. 17 Civil Lines Buxar, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of State Tax, Bihar, Commercial Tax Deparment, Ground Floor, Vikas Bhawan, Baily Road, Patna- 800 001, Bihar.
2. The Joint Commissioner of State Tax, Buxar Circle Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Archana Sinha @ Archana Shahi, Advocate
For the Respondent/s : Mr. Vivek Prasad, GP 7

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

Date : 01-12-2022

Heard learned counsel for the parties.

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

> “a) For setting aside the exparty order dated 27.10.2021 passed by the respondent by which he has ignored the provision of rule 35 of CGST 2017 and not consider this fact that the CGST and SGST tax amount for the month of NOVEMBER 2020 AND MARCH 2021 ie. Rs. 4670637 and Rs.8270629is inclusive of central and state tax is paid by the petitioner.
>
> b) For directing the respondent to appreciate / consider GSTR-38 which shows that the petitioner has paid tax amount of Rs. 443069 .41 in CGST and Rs. 443069.41 in SGST for the

month of March of the financial year 2020-21.

c) For setting aside the demand notice dated 29.10.2021 issued by the respondent no. 2.

d) For directing the respondent to grant opportunity of hearing to the petitioner before passing any order and also direct the respondents to consider the documents filed by the petitioner at the time of hearing.

e) For directing the respondent to defreeze the Bank account no 50200005235111 of HDFC Bank, Pipalpati road opposite Alka Cinema Buxarwhich was freezed illegally on 25.6.2022 when the tax amount has already paid by the petitioner.

f) For any other consequential relief or reliefs for which the is found entitled during course of hearing of this writ petition."

Petitioner has prayed for quashing of the order dated 27.10.2021 passed by the Assistant Commissioner of State Tax, Buxar Circle, Buxar, in GSTIN 10AAOFA1008Q2ZL (Annexure-2) as also Summary of the order in Form GST DRC-07 dated 29.10.2021 in Reference No. ZD1010210195365 (Annexure-3).

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 27.10.2021 passed by the Assistant Commissioner of State Tax, Buxar Circle, Buxar, in GSTIN

10AAOFA1008Q2ZL (Annexure-2) as also Summary of the order in Form GST DRC-07 dated 29.10.2021 in Reference No. ZD1010210195365 (Annexure-3);

(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 3rd of January, 2023 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. Also, opportunity to place on record all essential documents and materials, if so required and desired, shall be granted to the petitioner;

(i) During pendency of the assessment proceedings, 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 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)

Prakash/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	