IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15021 of 2022

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M/s G. Power Solution a Proprietorship Firm having its principal place of business at 1st Floor, 2, Madhuraj, Dr. R.K. Agrawal, Rajendra Path, Patna through its Authorized Signature namely Alok Kumar, aged about 47 years, Male, son of Shri Ram Rekha Thakur, resident of Dwarka Nagar, Muzaffarpur presently residing at 2, Madhuraj, Dr. R.K. Agrawal, Rajendra Path, P.S. Gandhi Maidan, District Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-cum-Commissioner, State Tax, Government of Bihar, Patna.
2. The Principal Secretary-cum-Commissioner, State Tax, Government of Bihar, Patna.
3. The Joint Commissioner of State Tax, Patna North Circle, Patna.
4. The Assistant Commissioner of State Tax, Patna North Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Mohit Agarwal, Advocate
		Mr. Lokesh Kumar, 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 : 10-11-2022

Heard learned counsel for the parties.

The petitioner has prayed for the following relief/s :-

(a) For quashing of the Assessment Orders under Section 62 of the Bihar Goods & Service Tax Act, 2017 bearing Ref. No. 6047 dated 19.10.2019 (April 2019), 6048 dated 19.10.2019 (May 2019), 6049 dated 19.10.2019 (June 2019), 6050 dated 19.10.2019 (July 2019), 7474 dated 18.11.2019 (September 2019) and 9192 dated 17.12.2019

(October 2019) passed by the Respondent Assistant Commissioner State Tax, Patna North Circle, Patna whereby Assessment order was passed for non-filing of GSTR-3B returns certain months of the Financial Year 2019-20 for being in teeth of Principles of Natural Justice as the same were passed without issuance of any show cause notice and affording an opportunity of hearing to the petitioner;

(b) For holding that an opportunity of hearing or to had been afforded to the petitioner before passing of the impugned assessment orders imposing penalty and interest upon the petitioner;

(c) For restraining the Respondents to recover the impugned demand during the pendency of the present writ as the same has been passed in violation of principles of natural justice; and for any other relief[s] for which the Petitioner may legally be found entitled to in the facts & circumstances of the present case.

The instant petition has been filed for quashing of the orders dated 19.10.2019 (in reference No. 6047, 6048, 6049 and 6050), 18.11.2019 (in reference No. 9192) and 17.12.2019 (in reference No. 9192) passed by the Respondent No. 4, namely, the Assistant Commissioner of State Taxes, Patna North Circle, Patna (GSTIN 10ADNPT6400H1ZQ) as the same was passed without issuance of any show cause notice and affording any opportunity of hearing.

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. 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 orders dated 19.10.2019 (in reference No. 6047, 6048, 6049 and 6050), 18.11.2019 (in reference No. 9192) and 17.12.2019 (in reference No. 9192) passed by the Respondent No. 4, namely, the Assistant Commissioner of State Taxes, Patna North Circle, Patna (GSTIN 10ADNPT6400H1ZQ);

(b) The petitioner undertakes to deposit 20% 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, 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 24.11.2022 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) 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 to place on record all essential documents and materials, if so required and desired;

(i) During pendency of the assessment, 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; and

(r) 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)

(Partha Sarthy, J)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	14/11/2022
Transmission Date	