IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16579 of 2022

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Prem Chandan Kumar Bharti Son of Dayanand Yadav, Resident of Srinagar Hata, Near D M Kothi Road, Police Station-K. Hat, District-Purnea, the proprietor of M/s Bhramri Constructions (GSTIN/ID-10ASFPB3453M1Z3).

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary-cum-Commissioner of State Tax, Bihar having its office at Vikas Bhawan, Bailey Road, Patna.
2. The Joint Commissioner of State Tax, Purnea Circle, Purnea.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Parijat Saurav, 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)

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(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.)

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Date : 02-12-2022

Heard learned counsel for the parties.

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

i) For issuance of a writ in the nature of **Certiorari** or any other appropriate writ or order for quashing of the *ex-parte* assessment order dated 26/02/2022 alongwith order contained in Ref. No. ZD1005220112368 dated 30/05/2022 passed under the signature of respondent no. 2 and the consequential under the signature of respondent no. 2 and the consequential demand notice contained in Form GST DRC-07 dated 30/05/2022, levying GST amounting to Rs. 16,53,658/- (Rs. Sixteen lac, fifty three thousand, six hundred and fifty eight only) alongwith interest of Rs. 3,30,174/- (Rs. Three lac, Thirty thousand, one hundred and seventy four only) and penalty of Rs. 1,65,366/- (Rs. One lac, sixty five thousand, three hundred and sixty six only), total amounting to Rs. 21,49,198/- (Rs. Twenty one lac, forty nine thousand, one hundred and ninety eight only) for the period April 2021 to December 2021, and be pleased to remand the matter back to the respondent no. 2 for fresh considering after affording the opportunity of hearing to the petitioner.

ii) For issuance of a writ in the nature of **Certiorari** or any other appropriate writ or order for quashing the consequential garnishee order issued under Section 79(1)(c) of the GST Act, dated 12/10/2022 contained in process no. 832 in Form GST DRC-13 issued by the respondent no. 2 to the Executive Engineer, P.H. Division, Madhepura directing the latter to make payment of Rs. 21,49,198/- (Rs. Twenty one lac, forty nine thousand, one hundred and ninety eight only).

iii) For issuance of any other appropriate writ, order or direction which Your Lordships may deem fit and proper in the facts and circumstances of the case.

Petitioner has prayed for quashing of the order dated 26.02.2022 passed by Respondent No. 2, namely, the Joint Commissioner of State Tax, Purnea Circle, Purnea;

order dated 30.05.2022 passed by the same authority in Reference No. ZD1005220112368; summary of the order in Form GST DRC-07 dated 30.05.2022 (Annexure-2 series) and the order dated 12.10.2022 contained in process no. 832 in Form GST DRC-13 (Annexure-3).

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. 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 26.02.2022 passed by Respondent No. 2, namely, the Joint Commissioner of State Tax, Purnea Circle, Purnea; order dated 30.05.2022 passed by the same authority in Reference No. ZD1005220112368; summary of the order in Form GST DRC-07 dated 30.05.2022 (Annexure-2 series) and the order dated 12.10.2022 contained in process no. 832 in Form GST DRC-13 (Annexure-3);

(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;

(c) 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;

(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 2^{nd} 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) 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;

(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;

(q) 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	