IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16752 of 2022

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M/s Sandeep Traders (A Sole Proprietor ship Firm), having it registered office at Near Khuswaha Dharmsala, Anaith, District- Aarah, Bhojpur, Bihar through its Sole Properitor Dhananjay Kumar Verma.

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner of State Tax, New Secretariat, Patna.
2. Joint Commissioner of State Tax, Sahabad Circle, Araha, Bihar.
3. Assistant Commissioner of State Tax, Sahabad Circle, Aaraha, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Anurag Saurav, Advocate
For the Respondent/s	:	Mr.Vivek Prasad (GP7)

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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 : 09-12-2022

Heard learned counsel for the parties.

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

> "(1) For Issuance of an appropriate writ/ order/ direction for setting aside order bearing reference no. ZD100522008833X dated 25.05.2022

passed by Joint Commissioner of State Tax jurisdiction, Sahabad Circle, Aarah, Bihar, whereby and where under respondent rejected the Input Tax Credit Claim of the petitioner against the purchase made by the Petitioner after the payment of tax amount and issuance of Tax Invoice from "JVL AGRO INDUSTRIES LIMITED" on the ground that "JVL AGRO INDUSTRIES LIMITED" had not furnished monthly return in Form of GSTR-3B in the Financial Year 2018-19 and it has been alleged in Assessment Order that the petitioner had taken Input Tax credit to meet the demand in violation of provision of section 16(2)(c) of BGST Act.

(ii) For setting aside order dated 25.05.2022 passed by Joint Commissioner of State Tax Jurisdiction, Sahabad Circle, Aarah has rejected the input tax credit of the petitioner and imposed the tax including tax and penalty amounting of Rs. 4,86,692/- on the petitioner under section 73 (9) of BGST Act and a direction was issued to raised demand in the Form of GST DRC 07.

(iii) For setting aside the demand notice issued in the Form of DRC 07 bearing Reference No. ZD100522008833X Dated: 25.05.2022, Whereby and Where under an amount of Rs.4,86,692/- has been imposed as Tax, Interest and Penalty.

(iv) For Setting aside Order dated: 07.11.2022 issued by respondent no.3, where by and where under a direction was made to issue Form DRC-13 for attachment of Bank Account of the Petitioner.

(v) For Setting aside DRC-13 issued by Assistant Commissioner of State Tax, Sahabad Circle, Aaraha vide Reference Recovery No. 318 Dated 07.11.2022 to Punjab National Bank,Station Road, Ara to attached the Bank Account of the Petitioner and recover an amount of Rs. 13,30464/-.

(vi) For releasing all of the Bank Account of the petitioner which has been attached by the respondent authorities.

(vii) For issuance of an appropriate Writ(s), order(S), and/or direction(s), as Your

Lordships may deem fit and proper in the facts and circumstances of this case in the interest of justice."

It is brought to our notice that vide impugned order dated 25.05.2022 passed by the respondent No.2, namely, the Joint Commissioner of State Tax, Sahabad Circle, Araha, Bihar (Reference No. ZD100522008833X), and demand notice dated 25.05.2022, for the tax period April 2018- March, 2019, a demand of Rs.4,86,692/-has been raised and vide order dated 07.11.2022 issued by respondent No.3, namely, the Assistant Commissioner of State Tax, Sahabad Circle, Aaraha, Bihar direction was issued to attach the bank account of 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, 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 25.05.2022 passed by the respondent No.2, namely, the Joint Commissioner of State Tax, Sahabad Circle, Araha, Bihar (Reference No. ZD100522008833X); demand notice dated 25.05.2022, for the tax period April 2018- March, 2019 and order dated 07.11.2022 issued by respondent No.3, namely, the Assistant Commissioner of State Tax, Sahabad Circle, Aaraha, Bihar;

(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 23.12.2022 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;

(r) If possible, proceedings during the time of current Pandemic [Covid-19] 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	13.12.2022
Transmission Date	