IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17135 of 2022

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M/s NR Motors Barsoi Katihar through proprietor Roshana Khatun @ Roshna, aged about 35 years, gender female, wife of Mohammad Nasim, resident of PWD Ras Chowk Sultanpur, Katihar Barsoi, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of commercial taxes Bihar, New Secretariat, Patna.
2. The Commissioner of commercial taxes Bihar, Purnia Division Purnia.
3. The Deputy Commissioner of commercial taxes, Katihar circle Katihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mrs.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 : 16-12-2022

Petitioner has prayed for following relief(s) : -

> "i. For issuance of writ of certiorari, quashing of Assessment Order dated 5.2.2021 and demand notice dated 22.7.2022 for Assessment period April to June-2020 (2020-2021) (Annexure-1 series).
>
> ii. For quashing of Appeal order dated 24.9.2022 for Assessment period April to June-2020 (2020-2021) (Annexure 2).
>
> iii. For condoning the delay in filing certified copy of assessment order in appeal and fixed a date of hearing accordingly before the Commissioner appeal.
>
> (iv) For any other consequential relief or reliefs for which the petitioner is found entitled during course of hearing of this writ petition."

It is brought to our notice that vide impugned order dated 24.09.2022 passed by the Additional Commissioner of State Taxes (Appeals), Purnea Division, Purnea, in Appeal Case No. (ARN) AD100922006450S, Memo No.373, the appeal of the petitioner against the order dated 05.02.2021 passed by The Assistant Commissioner of State Tax, Katihar Circle, Katihar, under Section 73 of CGST/BGST Act, 2017; and demand notice dated 22.07.2022 in Form GST DRC-13 passed by The Joint Commissioner of State Tax, Katihar Circle, Katihar, has been rejected on the ground of non-submission of certified copy of the impugned order.

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 and the limitation shall not be allowed to come in the way. 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 sufficient reasons 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; (c) 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 ex parte in nature.

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 24.09.2022 passed by the Additional Commissioner of State Taxes (Appeals), Purnea Division, Purnea, in Appeal Case No. (ARN) AD100922006450S, Memo No.373, the order dated 05.02.2021 passed by The Assistant Commissioner of State Tax, Katihar Circle, Katihar, under Section 73 of CGST/BGST Act, 2017; and demand notice dated 22.07.2022 in Form GST DRC-13;

(b) We accept the statement of the petitioner that ten per cent of the total amount, being condition prerequisite for hearing of the appeal, already stands deposited. If that were so, well and good. However, if the amount is not deposited for whatever reason(s), same shall be done before the next date;

(c) Further the petitioner undertakes to additionally 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 contention 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 04.01.2023 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 to place on record all essential documents and materials, if so required and desired;

(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 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)

KC Jha/chn

AFR/NAFR	
CAV DATE	
Uploading Date	20.12.2022
Transmission Date	