IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.501 of 2023

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Raj Kumari Devi Wife of Binod Kumar, Resident of Mohala- New Shital Tola Ara, Police Station- Nawada, District- Bhojpur, Ara.

... ... 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, Shahabad Circle, Ara.

... ... 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)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 20-01-2023

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 perverse order dated 10/10/2021 purportedly passed under Section 61(3) of the GST Act without noticing the reply of the petitioner; and also the consequential entire proceedings under Section 73 of the GST Act including the show cause notice dated 10/10/2021 issued under Section 73(1) of the GST Act and the *ex-parte* and cryptic assessment order dated 02/12/2021 passed by the respondent no. 2 under Section 73 of the GST Act and the demand notice contained in Form GST DRC-07 dated 02/12/2021, levying GST amounting to Rs. 8,64,292/- (Rs. Eight lac, sixty four thousand, two hundred and ninety two only) alongwith interest of Rs. 2,11,840/- (Rs. Two lac, eleven thousand, eight hundred and forty only) and penalty of Rs. 86,428/- (Rs. Eighty six thousand, four hundred and twenty eight only), total amounting to Rs. 11,62,560/- (Rs. Eleven lac, sixty two thousand, five hundred and sixty only) for the period April 2019 to March 2020; and be pleased to remand the matter back to the respondent no. 2 for fresh consideration from the stage of taking decision under Section 61 of the Act after considering the reply of the petitioner and 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 of the the garnishee order dated 18/11/2022 contained in Form GST DRC-13 in Reference no. of recovery 356; and further be pleased to issue a writ in the nature of **Mandamus** or any other appropriate writ or order directing the respondents to unfreeze the bank account of the petitioner.

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.

It is brought to our notice that vide impugned orders dated 10.10.2021, 02.12.2021 and 18.11.2021 passed by the Respondent No. 2, namely the Joint Commissioner of State Tax, Shahabad Circle, Ara, the input tax credit claim of the petitioner has been rejected and tax amounting to Rs. 11,62,560.00, including penalty/interest, has been imposed, without providing any further notice to 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. 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. 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 10.10.2021, 02.12.2021 and 18.11.2021 passed by the Respondent No. 2, namely the Joint Commissioner of State Tax, Shahabad Circle, Ara;

(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'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 06.02.2023 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 to place on record all essential documents and materials, if so required and desired;

(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 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)

Rajiv/-K.C. Jha

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	