

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17286 of 2022

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M/S Sandeep Traders (a Sole Proprietor ship Firm), having its registered office at Near Khushwaha Dharmasala, Anaith, District Aarah, Bhojpur, Bihar through its Sole Properitor Dhananjay Kumar Verma. Aged about 40 years.

... .. Petitioner/s

Versus

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

Date : 09-01-2023

Heard learned counsel for the parties.

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

(i) For issuance of an appropriate writ/order/direction for setting aside order bearing reference no. ZD1005220088470 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 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-3R from July 2017 to March 2017 (Financial Year 2017-18) 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. 8,43,770/- 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. ZD1005220088470 dated 25.05.2022, whereby and where under an amount of Rs. 8,43,770/- has been imposed as Tax, Interest and Penalty.

(iv) For setting aside Order dated 07.11.2022 issued by respondent no.3 whereby 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. 13,30,464/-.

(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, Aaraha, Bihar (Ref. No.ZD1005220088470) and demand notice in Form GST DRC-07 dated 25.05.2022 (Ref. No. ZD1005220088470), for the



period July, 2017 to March, 2018, a demand of Rs.8,43,770/- has been raised. The petitioner has also prayed for quashing of the order dated 07.11.2022, passed by respondent No.3, namely, the Assistant Commissioner of State Tax, Sahabad Circle, Aaraha, Bihar issued in Form DRC-13 whereby bank account of the petitioner has been attached.

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 order dated 25.05.2022, passed by the Respondent No. 2, namely, the Joint Commissioner of State Tax, Sahabad Circle, Araha, Bihar (Ref. No.ZD1005220088470), demand notice in Form GST DRC-07 dated 25.05.2022 (Ref. No. ZD1005220088470), for the period July, 2017 to March, 2018 and the order dated 07.11.2022, passed by respondent No.3, namely, the Assistant Commissioner of State Tax, Sahabad Circle, Aaraha, Bihar;

(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 23.01.2023 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) 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 be conducted through digital mode;

The instant petition stands 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)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

