IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.695 of 2023

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Lucky Traders a proprietory concern having its office at Thana Road, Triveniganj, Supaul Bihar through its Proprietor Devendra Singh (Male) aged about 40 years son of Baljit Singh, resident of 84KA, Near Thana Road, P.S. Triveniganj, Thalha Gahla, Supaul, Bihar- 852139

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner of State Tax, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Joint Commissioner of State Tax, Supaul, Purnea.
3. Dy. Commissioner of State Tax, Supaul, Purnea.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.D.V.Pathy, 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 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 : 20-01-2023

Heard learned counsel for the parties.

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

i) the order dated 06.06.2022 (as contained in Annexure -3 series) passed by the respondent no. 2 under Section 73 of the Bihar Goods and Services Tax Act, 2017 (hereinafter called the Act) for the Financial Year 2017 – 18 without consideration of the issues and also payment of tax in the ensuing month of April 2018 and passing an order taking into account the turnover and corresponding details of the Financial Year 2018 – 19 being contrary to the settled principles of natural justice be quashed.

ii) the hand written order dated 06.06.2022 (as contained in Annexure -4) passed by the respondent no. 2 under Section 73 of the Bihar Goods and Services Tax Act, 2017 (hereinafter called the Act) for the Financial Year 2017 – 18 without consideration of the issues and also payment of tax in the ensuing month of April 2018 and passing an order taking into account the turnover and corresponding details of the Financial Year 2018 – 19 being contrary to the settled principles of natural justice be quashed.

iii) the summary of order dated 06.06.2022 (as contained in Annexure – series) in Form GST DRC 07 be quashed.

iv) the respondent no. 2 be directed to pass separate orders of assessment for each of the the Financial Year 2017 – 18 and 2018 – 19 sepertaely.

v) for granting any other relief (s) to which the petitioner is otherwise found entitled to.

It is brought to our notice that vide impugned order dated 06.06.2022 passed by the Respondent No. 2, namely the Joint Commissioner of State Tax, Supaul, Purnea, the input tax credit claim of the petitioner has been rejected and tax, including interest and penalty, 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 order dated 06.06.2022 passed by the Respondent No. 2, namely the Joint Commissioner of State Tax, Supaul, Purnea;

(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 separate speaking orders with respect to each one of the years, 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	