IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.140 of 2023

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We Buy Phones, a proprietary concern having its office at Ground Floor, Hari Om Apartment, New Dak Bunglow Road, Exhibition Road, Patna, Bihar - 800001 through its proprietor Sarvjeet Keshri, Gender- Male, aged about 24 years, Son of Shri Sanjay Keshri, Resident of Flat No. 601, Radha Krishna Complex, R.K. Bhattacharya Road, Post - G.P.O, Police Station - Gandhi Maidan, Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through The Principal Secretary, State Tax, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. The Principal Secretary Cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
3. The Joint Commissioner of State Taxes, Gandhi Maidan Circle, Patna West, Government of Bihar, Patna.
4. Assistant Commissioner of State Tax, Gandhi Maidan Circle, Patna West, Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Bijay Kumar Gupta, 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

Petitioner has prayed for following relief (s) : -

> "i) The Show Cause Notice dated 26.10.2021 (as contained in Annexure-1) issued by the Respondent No.-4 for tax, and penalty amounting to Rs.2,57,662.82 under the CGST/BGST Act for the period April- 2020 to March-2021 in Form DRC-01

be quashed.

ii) The Ex parte order dated 25.01.2022 (as contained in Annexure-2) in form of DRC-07 passed by the Respondent No-4 demanding tax, interest and penalty amounting to Rs.2,91,978.92 under the CGST/BGST Act -2017 for the period April 2020 to March 2021 in Form GST DRC-07 without providing sufficient opportunity in violation of principles of natural justice be stayed during the pendency of this writ petition.

iii) For issuance of a direction upon the Respondents to immediately revoke/withdraw the order of attachment of bank account of the petitioner.

iv) For holding and declaring that the order of attachment of bank account of the petitioner issued by the Respondent assessing authority in the month of May, 2022 is thoroughly illegal, arbitrary and violative of the principles of natural justice as the petitioner was never issued any prior notice about such coercive and extreme action being taken for the purpose of recovery of such assessed demand;

v) For issuing a writ of certiorari or any other appropriate writ quashing/ setting aside adjudication order dated 25.01.2022 passed by the Respondent No.- 4 on the ground of violation of natural justice and remand the matter for fresh adjudication after giving the petitioner the opportunity to make appropriate submissions.

vi) For granting any other relief (s) to which the petitioner is otherwise found entitled to in accordance with law."

It is brought to our notice that vide impugned order dated 25.01.2022 passed by the Respondent No. 4, namely the Assistant Commissioner of State Tax, Gandhi Maidan Circle, Patna West, Patna, the input tax credit claim of the petitioner has been rejected and tax amounting to Rs. 2,91,978.92, 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 order dated 25.01.2022 passed by the Respondent No. 4, namely the Assistant Commissioner of State Tax, Gandhi Maidan Circle, Patna West, Patna;

(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)

KC Jha/chn

AFR/NAFR	
CAV DATE	
Uploading Date	24.01.2023
Transmission Date	