IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18111 of 2022

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Shiv Kumar Yadav Son of Shankar Prasad Yadav Resident of Village and Post-Office Saraiya, Police-Station-Gautambudh Nagar, District-Siwan.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Government of Bihar Patna.
2. The Commissioner-Cum-Secretary State Tax, Government of Bihar Patna.
3. The Special Commissioner of State Tax, Government of Bihar Patna.
4. The Additional Commissioner of State Tax, Government of Bihar Muzaffarpur.
5. The District Magistrate Siwan.
6. The joint Commissioner of State Tax, Government of Bihar Circle Chapra.
7. The joint Commissioner of State Tax, Government of Bihar Siwan.
8. The Assistant Commissioner of State Tax, Circle Siwan
9. The District Education Officer, Siwan.
10. The District Programme Officer, Primary Education-Cum-Surva Shiksha Abhiyan Siwan.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shambhu Prasad Yadav, 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)

Date : 10-01-2023

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

> "1. That this is an application for issuance of a writ in the "MANDAMAS" or other appropriate writ/writs, Direction /Directions, order /orders for commanding the Respondents to quashing Procese No. 6961 dated 25-10-2021 as well as Procese No. 4312 dated 10-01-2021 issued by Respondent no. 8. The Respondent no. 8 has

pleased to order to the petitioner to paid Total Rs. 1,08,881.86 (one lakh eight thousand eight hundred eighty one rupees and eighty six paise) Tax-Rs. 41,543.00, Penalty Rs. 20,000/- Interest Rs. 7,338.86 for period of 2020-2021 as well as to paid Total Rs. 70331.60 (seventy thousand three hundred thirty one rupees and sixty paise). Tax-Rs. 44640.00, Penalty 20,000/- Interest Rs. 70231.60.

It is further pray that the petitioner has not received any GST from Surav Siksha Abhiyan under District Siwan i. e from Respondent no. 10. The petitioner has not entitled to paid GST to aforesaid amount to Respondent no. 8.

It is further pray that the operation of Procese No. 6961 dated 25-10-2021 as well as Procese No. 4312 dated 10-01-2021 issued by Respondent no. 8 may be stay during the pendency of this writ petition.

This petition has been filed for quashing of the orders dated 25.10.2021 and 10.01.2021 passed by the respondent no. 8 namely The Assistant Commissioner of State Taxes, Circle Siwan, Patna in GSTIN-10ABIPY1272F1ZU for the period 2020-21. The order is *ex parte* in nature.

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 orders dated 25.10.2021 and 10.01.2021 passed by the respondent no. 8 namely The Assistant Commissioner of State Taxes, Circle Siwan, Patna in GSTIN-10ABIPY1272F1ZU for the period 2020-21;

(b) The petitioner undertakes to deposit 20% of the amount of the demand raised before the Assessing Officer. This shall be done within eight 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 25.01.2023 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 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)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	