

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15680 of 2022

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M/s Cement House Refyuji Colony, Bangoan Road, Saharsa, through its Proprietor Saurav Kumar (male), Aged About 38 Years, S/o Adiyath Jha, Residing at Krishna Nagar, Ward No. 22, Saharsa, District- Saharsa, Bihar.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary Department of Revenue, Ministry of Finance, North Block, New Delhi- 110001.
2. The Secretary Department of Revenue, Ministry of Finance, North Block, New Delhi- 110001.
3. The State of Bihar through the Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
4. The Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
5. The Joint Commissioner of State Tax, Saharsa Circle, Saharsa.
6. The Assistant Commissioner of State Tax, Saharsa Circle Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Gyan Shankar, Advocate

For the Respondent/s : Dr. K.N.Singh, A.S.G.
Mr. Vivek Prasad, G.P.-7.

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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 : 09-12-2022

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

“(i) For issuing a writ of certiorari or any other



appropriate writ quashing/setting aside the assessment order dated 06.03.2021 and 06.02.2021 (Annexure-1 & 2) passed by Respondent No. 6 for the F.Y. 2019-20 whereby and whereunder the ex parte assessment order has been passed for the aforesaid period and thereby a total liability of Rs. 32,00,296/- (with breakup as -(a) CGST worth Rs. 7,54,787/- with interest Rs. 90,574/- and penalty Rs. 7,54,787/- thereupon; and (b) SGST worthy Rs. 7,54,787/- with interest Rs. 90,574/- and penalty Rs. 7,54,787/- thereupon), has been imposed on the petitioner;

(ii) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the demand issued in form DRC -07 dated 06.02.2021 (Reference No. ZD100221005021T) (Annexure-3) passed by Respondent No. 6 for the F.Y. 2019-20 whereby and whereunder the ex parte demand order DRC 07 have been issued under the CGST/BGST Rules, 2017 for the aforesaid period and through the said DRC-07 and ex parte demand has been raised for the aforesaid period a total liability of Rs. 32,00,296/- (with breakup as -(a) CGST worth Rs. 7,54,787/- with interest Rs. 90,574/- and penalty Rs. 7,54,787/- thereupon; and (b) SGST worthy Rs. 7,54,787/- with interest Rs. 90,574/- and penalty Rs. 7,54,787/- has been imposed on the petitioner;

(iii) For issuing a writ of mandamus or any other appropriate writ directing the respondents not take any coercive action including recovery from bank account and third parties until pendency of the present writ application;



(iv) For issuing a writ of mandamus and thereby directing the respondents to refund a sum of Rs. 16,90,722/- which has been seized by the respondents from the cash credit ledger of the petitioner by way of recovery against the total liability of Rs. 32,00,296/-

(v) For issuance of appropriate direction including the mandamus directing the respondents to pass fresh assessment order for the F.Y. 2019-20 upon considering the GSTR- 9 filed by the petitioner for the said financial year to ascertain the actual tax liability, if any on the petitioner for the period April 2019 to March 2020;

(vi) For holding that the impugned assessment order dated 06.03.2021 and 06.02.2021 (have been issued in most illegal manner by Respondent No.6 before submitting the GSTR-9 and without examining the records and the supporting materials uploaded by the petitioner on its web-portal of GST;

(vii) For passing any such other order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

This petition has been filed for quashing of order dated 06.03.2021 and 06.02.2021 passed by the respondent no. 6 namely The Assistant Commissioner of State Taxes, Saharsa Circle, Sahara in Reference No. 1820 and Reference No. ZD100221005021T respectively as also summary of order dated 06.02.2021 passed in GST DRC-07 for the period 2019-20. 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 impugned orders dated



06.03.2021 and 06.02.2021 passed by the respondent no. 6 namely The Assistant Commissioner of State Taxes, Saharsa Circle, Sahara in Reference No. 1820 and Reference No. ZD100221005021T respectively as also summary of order dated 06.02.2021 passed in GST DRC-07 for the period 2019-20;

(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 23.12.2022 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)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	13.12.2022
Transmission Date	

