(2021) 09 PAT CK 0093

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 10007 Of 2021

Nabi Ishrat Security Agency APPELLANT

Vs

Union Of India RESPONDENT

Date of Decision : 23-09-2021

Acts Referred:

Citation : (2021) 09 PAT CK 0093

Hon'ble Judges : Sanjay Karol, CJ;S. Kumar, J

Bench : Division Bench

Advocate : Ranjeet Kumar, Dr. K.N. Singh, Anshuman Singh, P.N. Shahi

Final Decision : Disposed Of

Judgement

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

Petitioner has prayed for quashing of the impugned order dated 26.08.2019 passed by Respondent No. 6 namely Joint Commissioner, State Taxes, Danapur Circle, Danapur in Reference No. 609 (Annexure-3) and the order dated 28.08.2019, passed by respondent no. 6, Joint Commissioner, State Taxes, Danapur Circle, Danapur, in Process No. 635, (Annexure-4).

Shri Ranjeet Kumar, learned counsel for the petitioner states that 100 per cent of the amount in question stands deposited not only by the petitioner but also the third party.

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 26.08.2019 passed by the Respondent No. 6 namely Joint Commissioner, State Taxes, Danapur Circle, Danapur in Reference No. 609 (Annexure-3) as also the order dated 28.08.2019, passed by respondent no. 6, Joint Commissioner, State Taxes, Danapur Circle, Danapur, in Process No. 635, (Annexure-4);

(b) The deposit already made 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;

(c) 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.

(d) Petitioner undertakes to appear before the Assessing Authority on 11th of October, 2021 at 10:30 A.M., if possible through digital mode;

(e) The Assessing Authority shall decide the case on merits after complying with the principles of natural justice;

(f) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

(g) During pendency of the case, no coercive steps shall be taken against the petitioner.

(h) The Assessing Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(i) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(j) 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;

(k) The Assessing Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

(l) Liberty reserved to the petitioner to challenge the order, if required and desired;

(m) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(n) 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;

(o) We have not expressed any opinion on merits and all issues are left open;

(p) If possible, proceedings during the time of current Pandemic [Covid-19] 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.