

(2022) 01 PAT CK 0053

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 42 Of 2022

National Insuranc Co Ltd

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 17-01-2022

Acts Referred:

Bihar Goods And Service Tax Act, 2017 — Section 61, 73, 79

Citation : (2022) 01 PAT CK 0053

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

Bench : Division Bench

Advocate : Gautam Kumar Kejriwal, Vivek Prasad

Final Decision : Disposed Of

Judgement

Petitioner has prayed for the following relief(s):

â??a) for issuance of a writ in the nature of certiorari for quashing of an appellate order dated 13.11.2021 passed by the respondent number 2 and

issued vide memo number 669 in Appeal Case Number AD1008210131016 whereby the appeal preferred by the petitioner against the order dated

24.02.2021 passed by the respondent No. 3 has been rejected without appreciating the factual and legal issues contended and raised by the petitioner

in appeal;

b) For further issuance of a writ in the nature of certiorari for quashing of the order dated 24.02.2021 passed by the respondent number 3 under

Section 73 of the Bihar Goods And Services Tax Act, 2017 (hereinafter referred to as the Bihar act 2017 for short)) read with Central Goods And

Services Tax Act, 2017 (hereinafter referred to as the central act 2017 for short);

c) For further holding and a declaration that the impugned order dated 24.2.2021

passed by the respondent No. 3 is an erroneous exercise of

jurisdiction by the respondent number 3 as the same is not preceded by a proceeding under Sections 61 of the Bihar act 2017 read with central act

2017;

d) For further issuance of a writ or order or direction restraining the respondents from taking any coercive action in terms of section 79 of the Bihar

act 2017 read with Central Act, 2017 against the petitioner for recovery of the amount in demand in terms of the impugned order of assessment dated

24.02.2021 passed by the respondent No. 3 during the pendency of the instant writ application or thereafter;

e) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case.â??

It is brought to our notice that vide impugned order dated 13.11.2021 passed by the Respondent No. 2 namely the Additional Commissioner of State

Taxes (Appeal), Central Division, Patna in Appeal Case No. AD1008210131016, the appeal of the petitioner against the order dated 24.02.2021

passed by Respondent No.3, namely the Assistant Commissioner of State Taxes, Patliputra Circle, Patna has been rejected, allegedly, without

Â appreciating the factual and legal issues contended and raised by the petitioner in appeal.

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 13.11.2021 passed by the Respondent No. 2 namely the Additional Commissioner of State

Taxes (Appeal), Central Division, Patna in Appeal Case No. AD1008210131016, and the order dated 24.02.2021 passed by Respondent No.3, namely

the Assistant Commissioner of State Taxes, Patliputra Circle, Patna;

(b) We accept the statement of the petitioner that ten per cent of the total amount, being condition prerequisite for hearing of the appeal, already

stands deposited. If that were so, well and good. However, if the amount is not deposited for whatever reason(s), same shall be done before the next

date;

(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 7th February, 2022 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 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.