IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15002 of 2017

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1. M/s. Ayesha Exports, a proprietorship firm having its place of business at Ayesha Manzil, Nawabganj, P.O. - Kishanganj - 855108, Dist.- Kishanganj (Bihar) through its prorprietorship Majharul Haque son of late Md. Ilyas Resident of Ayesha Manzil, Nawabganj, P.O. Kishanganj, Dist. Kishanganj.

.... Petitioner/s

Versus

1. The State of Bihar through Commissioner-cum-Principal Secretary of Commercial Taxes, New Secretariat, Vikash Bhawan, Bailey Road, Patna.
2. The Deputy Commissioner of Commercial Taxes, Kishanganj Circle, Kishanganj.
3. The Joint Commissioner of Commercial Taxes (Appeal) Purnea Division, Purnea.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 15158 of 2017

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1. M/s. Ayesha Exports, a proprietorship firm having its Place of business at Ayesha Manzil, Nawabganj, P.O.- Kishanganj- 851108, dist.- Kishanganj (Bihar) through its Proprietorship Majharul Haque, Son of Late Md. Ilyas, Resident of Ayesha Mazil, Nawabganj, P.o.- Kishangaj, Dist.- Kishanganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner-cum-Principal Secretary, Commercial Taxes Department, Bihar having its Office at Vikash Bhawan, Bailey Road, Patna.
2. The Deputy Commissioner of Commercial Taxes, Kishanganj Circle, Kishanganj.
3. The Joint Commissioner of Commercial Taxes (Appeal) Purnea Division, Purnea.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 15329 of 2017

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1. M/s. Ayesha Exports, a proprietorship firm having its place of business at Ayesha Manzil, Nawabganj, P.O.- Kishanganj- 855108, District- Kishanganj (Bihar) tghrough its proprietorship Majharul Haque son of Late Md. Ilyas, Resident of Ayesha Manzil, Nawabganj, P.O.- Kishanganj, District Kishanganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner-cum- Principal Secretary, Commercial Taxes Department, Bihar having its office at Vikash Bhawan, Bailey Road, Patna.
2. The Deputy Commissioner of Commercial Taxes, Kishanganj Circle, Kishanganj.
3. The Joint Commissioner of Commercial Taxes (Appeal) Purnea Division, Purnea.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 15648 of 2017

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1. M/s. Ayesha Exports, a proprietorship firm having its place of business at Ayesha Manzil, Nawabganj, P.O.- Kishanganj- 855108, dist- Kishanganj (Bihar) through its proprietorship Majharul Haque, Son of Late Md. Ilyas, Resident of Ayesha Manzil, Nawabganj, P.O.- Kishanganj, Dist- Kishanganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner-cum-Principal Secretary, Commercial Taxes Department, Bihar having its office at Vikash Bhawan, Bailey Road, Patna.
2. The Assistant Commissioner of Commercial Taxes, Kishanganj Circle, Kishanganj.
3. The Joint Commissioner of Commercial Taxes (Appeal) Purnea Division, Purnea.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 15971 of 2017

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1. M/s. Ayesha Exports, a proprietorship firm having its place of business at Ayesha Manzil, Nawabganj, P.O.- Kishanganj- 855108, Dist.- Kishanganj (Bihar) through its proprietorship Majharul Haque, Son of late Md. Ilyas, Resident of Ayesha Manzil, Nawabganj, P.O.- Kishanganj, dist.- Kishanganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner-cum-Principal Secretary, Commercial Taxes Department, Bihar Having its Office at Vikash Bhawan, Bailey Road, Patna.
2. The Assistant Commissioner of Commercial Taxes, Kishanganj Circle, Kishanganj.
3. The Joint Commissioner of Commercial Taxes (Appeal) Purnea Division, Purnea.

.... Respondent/s

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Appearance :

(In CWJC No.15002 of 2017)

For the Petitioner/s : Mr. Ramesh Kumar Agrawal

For the Respondent/s : Mr. VIKASH KUMAR - SC-11

(In CWJC No.15158 of 2017)

For the Petitioner/s : Mr. Ramesh Kumar Agrawal

For the Respondent/s : Mr. VIKASH KUMAR-SC11

(In CWJC No.15329 of 2017)

For the Petitioner/s : Mr. Ramesh Kumar Agrawal

For the Respondent/s : Mr. LALIT KISHORE-AG

(In CWJC No.15648 of 2017)

For the Petitioner/s : Mr. Ramesh Kumar Agrawal

For the Respondent/s : Mr. VIKASH KUMAR-SC11

(In CWJC No.15971 of 2017)

For the Petitioner/s : Mr. Ramesh Kumar Agrawal
For the Respondent/s : Mr. LALTI KISHORE -AG

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 02-04-2018

All these five Writ Petitions are filed by the assesses calling in question the act of the Appellate Authority, namely, Joint Commissioner of Commercial Taxes (Appeal), Purnea, Respondent no. 3, in dismissing the appeals filed by the petitioner pertaining to the five assessment years for which demand of CST has been raised along with penalty and interest.

Grievance of the petitioner is that against the order of the assessing authority appeals in question were filed before the respondent no. 3, the Appellant Authority along with medical certificate on 15.03.2017. The Appellate Authority found two defects in most of the appeals, i.e., the appeals have not been filed by completely filling up statutory forms and applications for condonation of delay have not been filed. In one of the cases, an objection is also raised to say that the pre-deposit amount to be deposited along with the appeal has not been deposited which fact has been denied by the learned counsel for the petitioner.

Be that as it may, on going through the records we find that if the appeal was filed with the defects, interest of justice required that an opportunity of rectifying the defects should have been granted to the petitioner instead of dismissing the appeal on the ground of defects as are indicated here-in-above. The order sheet, certified copy of which is filed as Annexure-A to the Writ Petition, also does not indicate that notice was given to the petitioner to rectify the defects and instead of notice he did not do so.

Taking into consideration all the facts and the interest of justice involved in the matter, we allow all these appeals and dispose of in the following manner:-

Petitioner shall file a certified copy of this order along with an appropriate application seeking condonation of delay and requesting for rectifying the defects pointed out by the office including the fact about pre-deposit and on the same being done, the Appellate Authority shall scrutinize the appeal, grant a reasonable opportunity to the petitioner to remove the defects, if any, and thereafter proceed to decide the appeal on merit in accordance with law.

However, in case the petitioner shall appear before the Appellate Authority along with a copy, as directed here-in-above, on 15.04.2018 and thereafter in case within a reasonable period of time the appellant does not fulfill the requirement of removing the defects as directed by the Appellate Authority, the Appellate Authority shall be free to proceed in the matter.

However, in case the defects are removed and the appeal is fit to be heard, the Appellate Authority shall either hear the appeal on the question of stay and pass an appropriate order on the application for stay, at least, if any on the appeal itself on merit and till orders are not passed on the application for stay, all coercive actions against the petitioner shall be kept in abeyance.

For the present, we further direct that the Bank A/C of the petitioner shall be released and further action, coercive in nature, shall be taken only after the orders are passed on the application for stay or on non-compliance with the directions for rectifying the defects the appeal is disposed of by an order passed by the Appellate Authority.

With the aforesaid, all these petitions stand disposed of.

Till hearing of the stay application, the amount in question may be kept in the Bank Account.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06.04.2018
Transmission Date	N/A