

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 4574 of 2021

Mayank Singh, male, aged about 41 years, son of Mithilesh Kumar Singh, resident of House no. 6, Ganesh Path, Mohallah – Shivpuri, Post Office and Police Station – Shashtri nagar, District – Patna, the proprietor of **M/s Satya Enterprises**, having its office at House no. 6, Ganesh Path, Mohallah – Shivpuri, Post Office and Police Station – Shashtri nagar, District – Patna

... Petitioner

-Versus-

1. The State of Bihar through the Secretary-cum-Commissioner of State Tax, Bihar having its office at Vikas Bhawan, Bailey Road, Patna
2. The Additional Commissioner of State Taxes (Appeal), West Division, Patna
3. The Joint Commissioner of State Tax, Patna Central Circle, Patna
4. The Assistant Commissioner of State Tax, Patna Central Circle, Patna

..... Respondents

Appearance :

For the Petitioner/s : Mr. Parijat Saurav, Advocate
For the Respondent/s : Mr. Vikash Kumar, S.C. 11

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

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 : 24-06-2021

Petitioner has prayed for the following relief(s):

- i) For issuance of a writ in the nature of **Certiorari** or any other appropriate writ or order for quashing of order-in-appeal dated 06/11/2020 passed by the respondent no. 2, the Additional Commissioner of State Taxes (Appeal), West Division, Patna, whereby the appeal of the petitioner was dismissed only on the ground of "delay in submission of Appeal", and further be pleased to quash the assessment order-in-original no. 5391 contained in Form GST ASMT-13 dated 12/09/2019 passed under the signature of respondent no. 4 and the consequential demand notice contained in Form GST ^{DR} -07 dated 16/09/2019 levying tax amounting to Rs. 7,53,232.31/- (Rs. Seven lac, fifty three thousand, two hundred and thirty two and thirty one paise only) under Section 62(1) of the GST Act.
- ii) For issuance of a writ in the nature of **Mandamus** or any other appropriate writ or order for directing the respondent authorities to refund the aforesaid sum of Rs. 7,53,232.31/- (Rs. Seven lac, fifty three thousand, two hundred and thirty two and thirty one paise only) which has been deducted from the electronic ledger of the petitioner, pursuant to the impugned assessment order dated 12/09/2019.



- iii) In alternate, be pleased to remand the appeal of the petitioner to the respondent no. 2, the Additional Commissioner of State Taxes (Appeal), West Division, Patna to decide the appeal of the petitioner on merits, after quashing the order-in-appeal dated 06/11/2020 passed by the respondent no. 2.
- iv) For issuance of any other appropriate writ, order or direction which Your Lordships may deem fit and proper in the facts and circumstances of the case.

It is brought to our notice that vide impugned order dated 6th of November, 2020 (Annexure-7) passed by the Respondent No. 2 namely The Additional Commissioner of State Taxes (Appeal), West Division, Patna in Reference No. ZD101120000427H, the appeal of the petitioner against the assessment order-in-original no. 5391 contained in Form GST ASMT-13 dated 12.09.2019 passed by Respondent No. 4 namely The Assistant Commissioner of State Tax, Patna Central Circle, Patna has been rejected merely on the grounds of being barred by limitation.

In our considered view, the delay stands sufficiently explained on account of COVID restrictions.

Learned counsel for the petitioner states that the



entire amount in terms of the demand raised by the department stands recovered from the petitioner.

Learned counsel for the Revenue, states that he has no objection if the matter is remanded to the Appellate Authority for deciding the appeal afresh. Also, while considering and deciding the appeal, the ground of delay shall not be taken into account and the appeal shall be decided on merits. Also, during pendency of the appeal, no coercive steps shall be taken against the petitioner.

Statement accepted and taken on record.

Having heard learned counsel for the parties as also perused the record made available, we dispose of the present petition in the following mutually agreeable terms:-

(a) We quash and set aside the impugned order dated 6th of November, 2020 (Annexure-7) passed by the Respondent No. 2 namely The Additional Commissioner of State Taxes (Appeal), West Division, Patna in Reference No. ZD101120000427H;

(b) The appeal shall be decided on merits by passing a speaking order;



(c) If it is ultimately found that the amount recovered from the petitioner is 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 Appellate Authority i.e. The Additional Commissioner of State Taxes (Appeal), West Division, Patna on 26th of July, 2021 at 10:30 A.M., if possible through digital mode;

(f) The Appellate Authority shall condone the delay in filing the appeal and decide the appeal on merits after complying with the principles of natural justice;

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

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



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

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

(k) The Appellate Authority shall decide the appeal on merits expeditiously, preferably within a period of two months from the date of appearance of the petitioner;

(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.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/PKP-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

