IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 4279 of 2021

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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

-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

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Appearance :

For the Petitioner/s	:	Mr. Parijat Saurav, Advocate
For the Respondent/s	:	Mr. Y.P. Sinha, AAG-7

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

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(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. 8396 contained in Form GST ASMT-13 dated 11/10/2019 under Section 62(1) of the GST Act, passed under the signature of respondent no. 4 and the consequential demand notice contained in Form GST DRC-07 dated 17/10/2019 levying tax amounting to Rs. 6,35,926.88/- (Rs. Six lac, thirty five thousand, nine hundred and twenty six and eighty eight paise only).

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. 63,594/- (Rs. Sixty three thousand, five hundred and ninety four only) which has been paid as pre-deposit for preferring the appeal before the appellate authority.

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 stay of the demand notice contained in Form GST DRC-07 dated 17/10/2019 demanding tax amounting to Rs. 6,35,926.88/-, pursuant to the impugned assessment order dated 11/10/2019.

v) 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-6) passed by the Respondent No. 2 namely Additional Commissioner of State Taxes (Appeal), West Division, Patna in Reference No. ZD101120000426J, the appeal of the petitioner against the order-in-original no. 8396 contained in Form GST ASMT-13, under Section 62(1) of the GST Act, passed by the Assistant Commissioner of State Tax, Patna Central Circle, Patna has been rejected merely on the grounds of delay.

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

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 6^{th} of November, 2020 (Annexure-6) passed by the Respondent No. 2 namely Additional Commissioner of State Taxes (Appeal), West Division, Patna in Reference No. ZD101120000426J;

(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, the appeal shall be decided on merits. However, if the amount is not deposited for whatever reason(s), same shall be done before the next date;

(c) This deposit shall be without prejudice to the respective rights and contention of the parties and subject to the order passed by the Appellate Authority. 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;

(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. 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 by passing a speaking order 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 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.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/PKP-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	