IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 5121 of 2021

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M/s S. R. Brothers, through its proprietor Shri Sunil Kumar, Gender- Male, Son of Late Uma Charan, aged about 53 years, resident of Main Road, Ward no. 11 Gondapur, Nawada, Bihar 805110, having its office at Box Shop, Main Road, Nawada, Post- Nawada, District Nawada,

... Petitioner

Versus

1. Commissioner of State Tax, having its office at Vikas Bhawan Patna.
2. Addl. Commissioner of State Tax (Appeal), Magadh Division, Gaya.
3. Joint Commissioner of State Tax, Investigation Bureau, Bihar, Patna.

...Respondents

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Appearance :

For the Petitioner/s : Mr. D.V. Pathy, Advocate
Mrs. Manju Jha, Advocate

For the Respondent/s : Mr. Vikash Kumar, S.C. 11

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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) the order dated 01.10.2018 (as contained in Annexure-2 Series) passed by the respondent no. 3 under sections 122(1), 50, 73(11), & 35(2) of the Bihar Goods and Services Tax Act, 2017 for the period 2018 - 19 be quashed.

ii) the order and notice of demand dated 03.03.2020 (as contained in Annexure-4) passed by the respondent no.2 dismissing the appeal in liminie on the solitary ground of delay in filing of the appeal be quashed.

iii) the notice of demand dated 01.10.2018 (as contained in Annexure -2 series) issued by the respondent no. 3 be quashed.

iv) for granting any other relief(s) to which the petitioner is otherwise found entitled to.

It is brought to our notice that vide impugned order dated 3rd of March, 2020 (Annexure-4 series) passed by the Respondent No. 2 namely The Addl. Commissioner of State Tax (Appeal), Magadh Division, Gaya in Appeal Case No. ND/GST-07/19-20 (AD100120000119A), the appeal of the petitioner against the order dated 01.10.2018 passed by the Respondent No. 3 namely Joint Commissioner of State Tax, Investigation Bureau, Bihar, Patna under Sections 122(1), 50, 73(11), & 35(2) of the Bihr Goods and Services Tax Act, 2017 for the period 2018-19 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 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 3rd of March, 2020 (Annexure-4 series) passed by the Respondent No. 2 namely The Addl. Commissioner of State Tax (Appeal), Magadh Division, Gaya in Appeal Case No. ND/GST-07/19-20 (AD100120000119A);

(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 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;

(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. Respondent No. 2 namely The Addl. Commissioner of State Tax (Appeal), Magadh Division, Gaya 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 by passing a speaking order, 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	