IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8567 of 2021

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M/s Ayesha Exports a proprietorship firm having its place of business at Ayesha Manzil, Nawabganj, P.o.- Kishanganj- 855108 and district Kishanganj (Bihar) through its proprietor Majharul Haque (Male) son of Late Md. Iliyas, resident of Ayesha Manzil, Nawabganj, P.o.- Kishanganj-855108, 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 State Tax Additional Commissioner (Appeal) Purnea Devision, Purnea
4. The State Tax Joint Commissioner, Kishanganj Circle, Kishanganj
5. The Branch Manger, Punjab National Bank, Bantala Branch, Bantala, Kolkata (South 24 Pargana), West Bengal
6. The Branch Manger, Punjab National Bank, Bantala Branch, Bantala, Kolkata (South 24 Pargana), West Bengal
7. The Branch Manager, Canara Bank, Karaidanga, Kolkata Lather Complex, Kolkata

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ramesh Kumar Agrawal, Advocate
		Mr. Shive Kumar, Advocate
		Mr. Ravi Bharuka, Advocate
For the Respondent/s	:	Mr. Dr. K.N. Singh, ASG
		Mr. Anshuman Singh, Sr. S.C., CGST & CX
		Mr.Vivek Prasad (GP 7)
		Mr. Ranjan Ghosware, Advocate
		Mr. Kumar Priyaranjan, Advocate
		Mr. Surendra Kumar Sinha, Advocate
		Mr. Apurv Harsh, Advocate

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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 : 01-07-2021

Our attention is invited to the Circular dated 11th of August, 2020, issued by the Government of India, Ministry of Finance, Department of Revenue (State Taxes-I Section), and Circular dated 27th of October, 2020, issued by the Government of India, Ministry of Finance, Department of Revenue (Central Board of Indirect taxes & Customs) Legal Cell, copy whereof is taken on record.

In view of the same, Union of India be impleaded as Party Respondent No. 8.

Registry to make necessary correction, both on the digital as also the hard file.

Dr. K.N. Singh, learned Additional Solicitor General and Shri Anshuman Singh, Sr. S.C., CGST & CX enter appearance on behalf of the newly added respondents.

Petitioner has prayed for the following relief(s):

(i) For issuance of an appropriate writ(s), order(s) and or direction(s) in the nature of writ of certiorari for quashing the order dated 24.01.2019 under Memo No. 9 dated 25.01.2019 (Annexure 4) passed by the respondent State Tax Additional Commissioner (Appeal), Purnea Division, Purnea for the period 2013-14 by which the petitioner's appeal bearing No. KS VAT-CST-22016-17 has been partly dismissed on the vague ground that no evidence in support of concealed sale has been produced which proves that this is not concealed sale and to support arhat sale other evidence like dispatch of goods, a copy of agreement, payment evidence etc with Form-F were not produced under the provisos of the Central Sales Tax Act, 1956 (hereinafter referred to as "the CST Act only).

(ii) For issuance of an appropriate writ(s), order(s) and or direction(s) in the nature of writ of certiorari for quashing the order dated 29.06.2020 (Annexure- 5) passed by the respondent State Tax

Joint Commissioner, Kishanganj Circle, Kishanganj for the period 2013-14 by which although Form-C has been accepted but after rejecting Form-F total tax, penalty and interest Rs.8,48,76,238.55 has been created vide demand notice dated 29.06.2020 (Annexure- 5/A).

(iii) For issuance of appropriate writ/(s), order/(s) and/or direction/(s) in the nature of writ of mandamus restraining the respondent officers and the respondents Banks from taking any step for realization or collection of the aforesaid amount of tax, penalty and interest mentioned in the aforesaid impugned order of assessment and demand notice.

(iv) To grant such other consequential relief(s) to the petitioner, which this Hon’ble Court may find the petitioner to be entitled to in equity and/or in law in the facts and circumstances of the case."

It is brought to our notice that vide impugned order dated 24.01.2019 (Annexure-4) passed by the State Tax Additional Commissioner, (Appeal), Purnea Division, Purnea for the period 2013-14 in Appeal Case No. KS/VAT-CST-2/2016-17, the appeal of the petitioner has been partly dismissed on vague grounds that no evidence of support of concealed sale has been produced and vide order dated 29.06.2020 (Annexure-5) passed by the respondent State Tax Joint Commissioner, Kishanganj Circle, Kishanganj for the period in question although Form-C has been accepted but after rejecting Form-F total tax, penalty and interest of Rs. 8,48,76,238.55 has been created vide demand notice dated 29.06.2020 (Annexure-5/A).

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 24.01.2019 (Annexure-4) passed by the State Tax Additional Commissioner, (Appeal), Purnea Division, Purnea in Appeal Case No. KS/VAT-CST-2/2016-17, by which the appeal of the petitioner has been partly dismissed and order dated 29.06.2020 (Annexure-5) passed by the respondent State Tax Joint Commissioner, Kishanganj Circle, Kishanganj.

(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 three 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. Joint Commissioner of Commercial Taxes (Appeal), Magadh Division, Gaya on 1st of September, 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 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)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	07.07.2021
Transmission Date	