IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8664 of 2021

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M/s. Sri Gopikrishna Infrastructure Private Limited having its office at RT-503, Fifth Floor, Royal Tara Apartment, Survey Mauza, Sheikpura, P.S. Shastri Nagar, Bihar, 800014 through its Authorized Representative, Gottumukkala. Krishna Raju (Male), Aged About 53 Years, S/o Suryanarayan Raju Residing at Flat No. 503, 5th Floor, Royal Tara Apartment, Brahamasthan Gali, Rajabazar, P.S. Shastri Nagar, P.O. Raja bazar, District Patna Bihar, 800014.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
2. The Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
3. Joint Commissioner of State Tax, Patna Central Patna West, Bihar.
4. Additional Commissioner State Tax (Appeals), Central, Patna.
5. Assistant Commissioner of State Tax Patna Central Circle, Patna, Bihar.
6. North Bihar Power Distribution Company Limited, M/s Electrical Circle Saharsa, Aashta Bhawan, first Floor, Sant Nagar, Saharsa Bihar, 852201.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Y.V. Giri, Sr. Advocate
		Mr. Brisketu Sharan Pandey, Advocate
		Mr. Abhishek Kumar, Advocate
For the Respondent/s	:	Mr. Dr. K.N. Singh, ASG
		Mr. Anshuman Singh, Sr. S.C., CGST & CX
		Mr. Vikash Kumar, SC 11

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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. 7.

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 issuing a writ of certiorari or any other appropriate writ quashing/ setting aside the order dated 05.03.2020 passed by Respondent No. 4 as well as the best-judgment assessment order dated 11.09.2019 passed under Section 62 of the CGST Act, 2017, for the month of July 2019;
>
> (ii) For issuing a writ of mandamus or any other appropriate writ directing the Respondents not take any coercive action including recovery from bank account and third parties until pendency of the present writ application.
>
> iii) For issuing a writ of mandamus or any other

appropriate writ holding that inasmuch as the Petitioner has already filed the return for the month of July 2019 and paid the amounts of CGST and SGST along with interest, which is far in excess of the amounts demanded by the best-judgment assessment order dated 11.09.2019, thus, no further recovery can be made under the said order dated 11.09.2019;

(iv) For passing any such other order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

It is brought to our notice that vide impugned order dated 05.03.2020 (Annexure-6) passed by Respondent No. 4, namely the Additional Commissioner State Tax (Appeals), Patna in Appeal Case No. GST/PTC-49/19-20, the appeal of the petitioner against the order dated 11.09.2019 passed by the Joint Commissioner of State Tax, Patna Central, Patna West, Bihar in Reference No.ZA100919006186N has been rejected merely on the grounds of being barred by limitation. Both the orders were *ex parte* in nature.

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 05.03.2020 (Annexure-6) passed by Respondent No. 4, namely the Additional Commissioner State Tax (Appeals), Patna in Appeal Case No. GST/PTC-49/19-20, and order dated 11.09.2019 passed by the Joint Commissioner of State Tax, Patna Central, Patna West, Bihar in Reference No.ZA100919006186N;

(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. 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	