IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 8738 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 Suryanarayana 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. That 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. The Deputy Commissioner of State Tax, Patna Central: Patna West, Bihar
4. The Additional Commissioner State Tax (Appeals), Western Division, Patna
5. Assistant Commissioner of State Tax Patna Central Circle, Patna, Bihar
6. Joint Commissioner of State Tax, Patna Central Circle, Patna, Bihar
7. North Bihar Power Distribution Company Limited, M/s Superintending Engg. Building Circle Near P.O. Purnea 854 301

... ... 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. Vikash Kumar, S.C. 11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL ORDER

(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.)

2 23-07-2021 We are informed that vide judgment dated 09.07.2021 passed by this Court in the instant petition, the petition was

disposed of with a direction to the petitioner to appear before the Appellate Authority. However, inadvertently, another order has been typed with a direction to the petitioner to appear before the Assessing Authority, with an addition of Clause (c) in the said judgment, which needs to be modified.

Having gone through the record, we recall the order dated 09.07.2021 passed in the instant case.

The following order be treated to have been passed in the instant case on the said date:-

"Petitioner has prayed for the following relief(s):-

'(i) For issuing a writ of certiorari or any other appropriate writ quashing/ setting aside the appellate order dated 28.02.2020 passed by Respondent No. 4 as well as the adjudication order dated 17.09.2019 passed by the Respondent No. 3 on grounds of violation of natural justice; and remand the matter for fresh adjudication after giving the petitioner the opportunity to make appropriate submissions.
(ii) For issuing a writ of certiorari or any other appropriate writ quashing/ setting aside the proceedings for recovery of transitional credit initiated under Section 73 of BGST Act and Rule 121 of BGST Rules;
(iii) For issuing an appropriate writ, order or direction declaring Rule 121 of the BGST Rules, 2017 ultra vires the BGST Act, 2017;
(iv) For issuing appropriate writ and thereby setting aside/ quashing Notice dated 08.02.2021 to Respondent No. 7 issued by Respondent No. 5 in FORM GST DRC-13
(v) Pass 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

28th of February, 2020 (Annexure-P/9) passed by Respondent No. 4 namely the Additional Commissioner State Tax (Appeals), Western Division, Patna, in Appeal Case No. GST/PTC-38/19-20, the appeal of the petitioner against the order dated 17.09.2019 passed by Respondent No. 3 namely the Deputy Commissioner of State Tax, Patna Central, Patna West, Bihar, in Reference No. ZA100919006913K (Annexure P/4) and Summary of the order in Form GST DRC-07 dated 17.09.2019, 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 28th of February, 2020 (Annexure-P/9) passed by Respondent No. 4 namely the Additional Commissioner State Tax (Appeals), Western Division, Patna, in Appeal Case No. GST/PTC-38/19-20 for the period 01.07.2017-31.03.2018;

(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 on 16th of August, 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) The Appellate Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

(m) Liberty reserved to the petitioner to challenge the order, if required and desired;

(n) Liberty reserved to the petitioner to raise Prayer (iii) by way of separate proceedings.

(o) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(p) 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;

(q) We have not expressed any opinion on merits and all issues are left open;

(r) 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.

To the above extent, judgment dated 09.07.2021 passed in the instant petition is modified.

Let a copy of this order be kept, both on the digital as also the hard file.

(Sanjay Karol, CJ)

(S. Kumar, J)

Amrendra/PKP

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