# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Civil Writ Jurisdiction Case No.9567 of 2021**

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Raj Kumar Singh Raja Construction Private Limited a company incorporated under the Companies Act 1956 having its office at H/O Prem Dhari Singh, Balipaker, Paliganj, through its Managing Director, Raj Kumar (Male) (aged about 46 years) son of Prem Dhari Singh, resident of House No. A/16, Bank of India Colony, Indrapuri, Raja Bazar, Rukanpura, B.V. College, P.S. Shastri Nagar, Patna, Bihar.

... ... Petitioner/s

Versus

1. State of Bihar through the Commissioner of State Tax, having its office at Vikas Bhawan Bailey Road, Patna.
2. Addl. Commissioner of State Tax (Appeal), West Division, Patna.
3. Joint Commissioner of State Tax, Danapur Circle, Patna.

... ... Respondent/s

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**Appearance :**

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

For the Respondent/s : 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)**

**Date : 07-07-2021**

Petitioner has prayed for the following relief(s):

I) "the order dated 07.03.2020 (as contained in Annexure 4) for the Tax Period January 2019 passed by the respondent no. 3 under section 74 of the Bihar Goods and Services Tax Act, 2017 (hereinafter called the BGST Act) without grant of a reasonable opportunity of being heard in the matter and without passing a speaking order be quashed.

ii) the summary of order dated 07.03.2020 (as contained in Annexure -5) for the Tax Period January 2019 passed by the respondent no. 3 in Form GST DRC-07 be quashed.

iii) the order dated 13.02.2021 (as contained in Annexure-8) for the Tax Period January 2019 passed by the respondent no. 2 dismissing the appeal in liminie on the solitary ground of delay in filing of the appeal be quashed.

iv) the order dated Nil (as contained in Annexure -6) for the Tax Period August 2019 passed by the respondent no. 3 under section 74(9) of the BGST Act be quashed.

v) 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 13th of February, 2021 passed by the Respondent No. 2 namely the Additional Commissioner of State Tax (Appeal), West Division, Patna (Annexure-8), the appeal of the petitioner against the order dated 07.03.2020 (Annexure-4) passed by respondent No.3, namely Joint Commissioner of State Tax, Danapur Circle, Patna under Section 74 of the Act in GSTIN 10AACCR9102P1ZE under Reference No. ZA100320009324J and summary of order in Form GST DRC-07 dated 7th of March, 2020, for the tax period January, 2019, 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 Assessing Authority for deciding the case afresh. Also, the case shall be decided on merits. Also, during pendency of the case, no coercive steps shall be taken against the petitioner.

Statement accepted and taken on record.

However, having heard learned counsel for the parties as also perused the record made available, we are of the considered view that this Court, notwithstanding the statutory remedy, is not precluded from interfering where, *ex facie*, we form an opinion that the order is bad in law. This we say so, for two reasons- (a) violation of principles of natural justice, i.e. Fair opportunity of hearing. No sufficient time was afforded to the petitioner to represent his case; (b) order passed *ex parte* in nature, does not assign any sufficient reasons even decipherable from the record, as to how the officer could determine the amount due and payable by the assessee. The order, *ex parte* in nature, passed in violation of the principles of natural justice, entails civil consequences. As such, on this short ground alone, we dispose of the present writ petition in the following mutually agreeable terms:

(a) We quash and set aside the impugned order dated 13th of February, 2021 passed by the Respondent No. 2 namely the Additional Commissioner of State Tax (Appeal), West Division, Patna (Annexure-8), the order dated 07.03.2020 (Annexure-4) passed by respondent No.3, namely Joint Commissioner of State Tax, Danapur Circle, Patna under Section 74 of the Act in GSTIN 10AACCR9102P1ZE under Reference No. ZA100320009324J and summary of order in Form GST DRC-07 dated 7th of March, 2020, for the tax period January, 2019;

(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, well and good. However, if the amount is not deposited for whatever reason(s), same shall be done before the next date;

(c) Further the petitioner undertakes to additionally deposit ten per cent of the amount of the demand raised before the Assessing Officer. This shall be done within four weeks.

(d) 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;

(e) 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.

(f) Petitioner undertakes to appear before the Assessing Authority on 9th of August, 2021 at 10:30 A.M., if possible through digital mode;

(g) The Assessing Authority shall decide the case on merits after complying with the principles of natural justice;

(h) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

(i) During pendency of the case, no coercive steps shall be taken against the petitioner.

(j) The Assessing Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(k) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(l) The Assessing Authority shall decide the case on merits expeditiously, preferably within a period of two months from the date of appearance of the petitioner;

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

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

(o) 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;

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

(q) 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)**

P.K.P./-

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| **AFR/NAFR** | |
| **CAV DATE** | |
| **Uploading Date** | 16.07.2021 |
| **Transmission Date** | |