IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10046 of 2021

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Aadhar Stumbh Township Private Limited Address-Flat-302, Jaya Apartment, B Bhattacharya Road, Chowk, Patna, Bihar-800023 through its authorized representative Ankit Garg, aged abput 36 Years (Male), Son of Sh. Anil Garg.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner, State Taxes, Bihar, Patna.
2. Additional Commissioner of State Tax (Appeal) Appellate Authority, Patna West Division, Patna, Bihar.
3. Deputy Commissioner of State Tax, Patna South Patna West, Bihar.
4. The Branch Manager, Kotak Mahindra Bank Ltd, Exhibition Road Branch, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Kumar Shanu, Advocate Mr. Amrit Kumar, Advocate
For the Respondent/s	:	Mr. Pawan Kumar, AC to AG

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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 : 29-07-2021

Petitioner has prayed for the following relief(s):

I. For the issuance of a writ of certiorari and/or, any other appropriate writ/direction/order in the light of the directions passed by the Hon'ble Supreme Court of India in RE: COGNIZANCE FOR EXTENSION OF LIMITATION, SUO MOTU WRIT PETITION (CIVIL) No. 3 of 2020 for quashing the non-speaking order passed vide Order dated 01.03.2021 bearing Reference no. ZD100321000123Q by the Respondent No. 2, wherein the appeal bearing acknowledgment no. AD100221001423A was rejected.

II. For the issuance of a writ of mandamus, and/or, any other appropriate writ/direction/order to ensure the grant of all consequential reliefs in the matter.

III. For providing an opportunity of being heard to the petitioner and present its case/appeal before the Respondent No. 2 without re-submitting the pre-deposit amount as the same was deposited in the previous appeal which has not yet been returned to the petitioner.

IV. For staying the operation of Respondent No. 3/Deputy Commissioner of State Tax, Patna South: Patna West, Bihar's order dated 07.03.2020 and order/demand/communication dated 08.03.2020 bearing reference number CA1003200128377 (for the period- August 2019, GST No. 10AAFCA9593GIZO) passed under Section 74 of Bihar Goods and Service Act, 2017 until the pendency of the appeal.

V. For restraining the Branch Manager/officials of Kotak Mahindra Bank Ltd, Exhibition Road Branch, Patna from initiating any coercive action in the form of recovery of GST dues/remittance of any money to the state tax department from the account of the petitioner, in terms of its letter

02.03.2021, until the pendency of the appeal or directing the Respondent No. 3 to return the amount to the petitioner deducted from the petitioner's aforesaid account by Respondent no. 4 and deposited with Respondent no. 3, until the pendency of the appeal, if a coercive action is taken in terms of letter dated 02.03.2021 before the hearing of this case.

VI. For providing any other relief that your good self may deem fit in the interest of justice, equity and good conscience."

It is brought to our notice that vide impugned order dated 01.03.2021 passed by the Respondent No. 2, namely the Additional Commissioner of State Tax (Appeal/Appellate Authority), Patna West Division, Patna, Bihar in Appeal bearing acknowledgment no.AD100221001440E, the appeal of the petitioner against the order dated 07.03.2020 and order/demand/communication dated 08.03.2020 bearing reference number ZD100321000129E (for the period April 2019, GST No. 10AAFCA9593GIZO) passed by Respondent No.3, namely Deputy Commissioner of State Tax, Patna South: Patna West, Bihar under Section 74 of the Bihar Goods and Service Tax Act, 2017; has been rejected by a non-speaking order.

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.

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 01.03.2021 passed by the Respondent No. 2, namely the Additional Commissioner of State Tax (Appeal/Appellate Authority), Patna West Division, Patna, Bihar in Appeal bearing acknowledgment no.AD100221001440E, the order dated 07.03.2020 and order/demand/communication dated 08.03.2020 bearing reference number ZA1003200128179 (for the period April 2019, GST No. 10AAFCA9593GIZO) passed by Respondent No.3, namely Deputy Commissioner of State Tax, Patna South: Patna West, Bihar under Section 74 of the Bihar Goods and Service Tax Act, 2017;

(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 29th 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	04.08.2021
Transmission Date	