IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9741 of 2021

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M/S Sitaram Rajesh Kumar through Proprietor Rajesh Kumar, S/O Late Sitaram Shah, r/o Bekapur P.S. Kotwali, District- Munger having GSTIN 10AJKPS4518A1ZO.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. Additional Commissioner of State Tax (Appeal) Bhagalpur Division Bhagalpur Division Bhagalpur.
3. The Assistant Commissioner of State Tax Munger circle Munger

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Aman Raja, Advocate

For the Respondent/s : Mr.Vivek Prasad, Advocate

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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)

> “a) For issuance of a writ in the nature of certiorari for quashing of the order dated 21.03.2020 contained in Annexure-3 passed by Assistant Commissioner of State Tax Munger Circle Munger, u/s 74 of Bihar GST Act 2017 for the period of 1.4.2018 to 31.3.20219 (2018-2019) and as well as quashing connected demand notice in form GST DRC-07 dated 21.03.2020 contained in Annexure-4 in pursuance of order dated 18.3.2020 by exercising the powers under section 74(9) and section 50 of the Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as the Act-2017 for short);
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> b) For issuance of a writ in the nature of

certiorari for quashing of the order dated 27.02.2021 contained in Annexure-8 passed in Appeal Case No. M.G.G.S.T. : 29/20-21 by Additional Commissioner of State Tax Bhagalpur, for the period of 1.4.2018 to 31.03.20219 (2018-2019) dismissing the appeal against the order dated 21.3.2020 as no proper opportunity of hearing was granted to the petitioner thereby violating the principles of natural justice.

c) For issuance of a writ or order or direction on respondents especially respondent No. 3 to award an opportunity of filing the comprehensive reply and also of hearing in the proceeding initiated under Section 74 of the act and decide the matter afresh after considering all materials and explanation submitted by the petitioner.

d) For holding and declaration that the action of the respondent assessing authority is violation of principle of natural justice no responding and communicating to the petitioner anything about the result of reply dated 18.2.2020 submitted by the petitioner in form of GST ASMT-11 with reference No. -ZA100220000277L along with bill contained in Annexure-2 series in pursuance of GST ASMT-10 dated 2/2/2020 contained in Annexure-1 and as well as passing of the aforesaid impugned order along with the demand notice dated 21.03.2020 having reference no. ZA1003200205521 passed by Assistant Commissioner of State Tax without fixing a date of hearing and decision is denial of rights to adequate opportunity of hearing and therefore violates the principles of natural justice;

e) For holding and a declaration that the action of the respondent assessing authority is not responding and communicating to the petitioner and without issuing the form DRC-06 and passing of the aforesaid impugned order along with demand notice without fixing a date of hearing and decision is denial of rights to adequate opportunity of hearing and therefore violates the principles of natural justice.

f) For further holding and a declaration that in the undisputed facts and circumstances of this case the petitioner is entitled to an opportunity of submitting its case and also of hearing on the issues of facts and law before any fresh decision is taken by the respondent assessing authority in terms of the provisions of the act;

g) To quash the order of attached bank account of the petitioner's establishment issued to the bank authority contained in Annexure-5 by the respondent No. -3 and the authority may be directed to release immediately as the same is greatly hindering the ongoing business;

h) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case."

It is brought to our notice that vide impugned order dated 27.02.2021 (Annexure-8) passed by the Additional Commissioner of State Tax, Bhagalpur in Appeal Case No. M.G.G.S.T-29/20-21, the appeal of the petitioner against the order dated 21.03.2020 passed by the Assistant Commissioner of State Taxes, Munger in GSTIN/ID:10AJKPS4518A1ZO (Reference No. ZA100320020552L), 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 27.02.2021 (Annexure-8) passed by the Additional Commissioner of State Tax, Bhagalpur in Appeal Case No. MGGST-29/20-21.

(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. Additional Commissioner of State Tax (Appeal), Bhagalpur Division, Bhagalpur on 18th 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) 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)

Sujit/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	16.07.2021
Transmission Date	