IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11366 of 2021

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Rohit Kumar Ojha S/o Harendra Ojha, Resident of Village-Nimej, Police Station and P.O.-Brahmpur, District-Buxar, Pin Code-802130, Proprietor of M/S Rohit Kumar Ojha, at Vilage-Nimej, Police Station-Buxar, Pin Code-802130.

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner, State Tax.
2. The Commissioner of State tax (Appeal), West Division-Patna.
3. Additional Commissioner of State Tax (Appeal) West Division Patna.
4. Deputy Commissioner, State Tax, Buxar Anchal, Buxar.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Pramod Kumar, Advocate

For the Respondent/s : Mr.Vivek Prasad, GP-7

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-07-2021

Petitioner has prayed for the following relief(s):

> "That the petitioner is Citizen of India and filing this writ application for issuance of an appropriate writ, Order/Direction Quashing the Order dated 08.03.2021 passed in Reference No.-ZD1003210016558 filed by the petitioner by way of an appeal to Appellate Authority i.e. Respondent

> No.2 wherein and whereas the Additional Commissioner (Respondent No.-3) of State Tax on behalf of the Appellate Authority passed the order of rejection of appeal being time bared and further for a direction to authority concerned to get it resorted in view of an order dated 08.03.2021 in sue Moto writ petition (Civil) No. 3/2020 passed by Hon'ble Supreme Court."

The instant petition has been filed for quashing of the impugned order dated 08.03.2021, passed by Respondent No.2 namely Additional Commissioner of State Tax (Appeal), West Division Patna, in Form GST APL-02 (Reference No. ZD1003210016558) whereby the appeal of the petitioner has been rejected merely on the grounds of being barred by limitation. The order was 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 08.03.2021, passed by Respondent No.2 namely Additional Commissioner of State Tax (Appeal), West Division Patna, in Form GST APL-02 (Reference No. ZD1003210016558);

(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 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;

(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 3rd 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) 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)

Ashwini/Sujit/

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	