IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11314 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 Kumr Ojha, at Village - Nimej, Police Station- Buxar, Pin Cod 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 Mr. Chhote Lal Narain Singh, Advocate Mr. Abhishek Pandey, 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)

(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):

“For issuance of an appropriate writ, Order/Direction for Quashing the Order dated 08.03.2021 passed in Reference No.- ZD1003210016566 filed by the petitioner by way of an appeal to the 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 barred and further for a direction to the Authority concerned to get it restored and hear the appeal on merit in view of an order dated 08.03.2021 in the Sue Moto Writ petition (Civil) No.- 03/2020 passed by Hon'ble Supreme Court.5."

It is brought to our notice that vide impugned order dated 08.03.2021 passed by the Respondent No. 2, namely the Commissioner of State Tax (Appeal), West Division, Patna, in Reference No.- ZD1003210016566 filed by the petitioner by way of an appeal to the 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 barred.

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 08.03.2021 passed by the Respondent No. 2, namely the Commissioner of State Tax (Appeal), West Division, Patna, in Reference No.- ZD1003210016566. Appeal stands restored to its original number and position;

(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	