IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10929 of 2021

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M/s Maa Durga Lubricant Store, Purab bazar, Ward No. - 30, District- Saharasa, GSTN- 10AQGPY1955LIZI Proprietor, - Govind Yadav, aged about 50 years, Gender- Male, Son of - Saryug Yadav, Resident of - Barsam, Ward No. 04, Barsam, Saharsa, Barsam, Bihar-0 85221.

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner cum Secretary State Tax, Vikash Bhavan, Patna.
2. The Commissioner of State Tax, Bihar, Patna.
3. The Additional Commissioner (Appeal) state tax purnia Division Purnia.
4. The Assistant Commissioner, State Tax, Circle Saharsa, District- Saharsa.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Krishna Mohan Mishra

For the Respondent/s : Mr.Lalit Kishore (Ag)

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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

The petitioner has prayed for the following relief/s :-

> "i. To issue writ of mandamus or any other appropriate writ and quash the notification no. 10 of 2Ol7, Central Tax dated 28.06.2017 which issued under sub rule (5) Rule 61 of CGST (second Amendments) Rules 2017 (incorporated in chapter - VI of the CGST Rules) as the said rule is illegal, unconstitutional, and against the provision of section 39 of the CGST Act (Annexure-4).
> ii. To issue writ of certiorari or any other appropriate writ to quash the order passed by Additional Commissioner, (Appeal), State Tax, Purnia- Division Purnia dated 09.01.2021 which contain in gyapank no. 306 purnia dated 11.01.2021 and also the order passed by assistant commissioner, State Tax, Circle- saharsa, District- Saharsa dated 28.01.2O2O/19.O2.2020 in view of

> the fact that the Assessing officer and the appellate commissioner has passed order without providing opportunity and also without considering the fact and 1aw.
> iii. To hold and declare that the levy of tax of Rs6,62,824/- and interest of Rs.35,956/- total 6,98,780/-- after rejecting the claim of input tax credit arbitrary and illegal because such input credit were accrued u/s 16, the petitioner therefore is entitled to get adjustment against output tax as per the provision of section l6 r/w section 49 of the CGST Act.
> iv. To hold and declare that the order passed by appellate additional
> commissioner dated 09/11.01.2021 is wholly illegal and arbitrary because the appellate addll. commissioner had dismissed appeal on delay in filing appear ignoring the fact that due to corona crises, the appeal was not filed within the time as such the delay was condonable.
> v. To issue any other writ/writs, order/order, direction/directions as deemed fit and proper."

It has been brought to our notice that vide order dated 09.01.2021 passed by Respondent No. 3 namely The Additional Commissioner of State Tax (Appeal), Purnea Division Purnea, in Appeal No. (ARN) AD1006200001570, the appeal of the petitioner against the order dated 19.02.2020 issued by Respondent No. 4 namely Assistant Commissioner of State Tax, Circle Saharsa in DRC-07 (GSTIN/ID: 10AQGPY1955L1ZI) whereby the appeal of the petitioner 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 09.01.2021 passed by Respondent No. 3 namely The Additional Commissioner of State Tax (Appeal), Purnea Division, Purnea, in Appeal No. (ARN) AD1006200001570**;**

(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)

Sujit/Ashwini/

AFR/NAFR	
CAV DATE	
Uploading Date	29.07.2021
Transmission Date	