IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10067 of 2021

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M/S Power House Equipments Pvt. Ltd., Plot No. NH - 83 Sunder Nagar, Kurthoul, Patna through its director Sri Gautam Mishra (Male) Aged about 42 Years, Son of Kedar Nath Mishra, Resident of A/2 Bhagwati Complex Nawal Kishore Road, Kadam Kuan, Police Station- Kadam Kuan, District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary cum- Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Joint Commissioner of State Taxes Patliputra Circle, Patna.
3. The Deputy Commissioner of State Taxes Patliputra Circle, Patna.
4. The Assistant Commissioner of State Taxes Patliputra Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jagdish Prasad Singh, Advocate
		Mr. Pravin Kumar Chaubey, Advocate
For the Respondent/s	:	Mr. Vivek Prasad, G.P.-7

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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 : 08-07-2021

Petitioner has prayed for the following relief(s):

(I) Certiorari:- For setting aside the order as contained in Memo No. 126 dated 15.02.2021 whereby and where under APL-01 against order DRCO7ZA101218001010S dated 14.12.2018 has been dismissed as time barred by Additional Commissioner, Tax (Appeal) Central Pramandal, Patna.

II) Certiorari:- For setting aside of GST DRC-07 bearing Ref No. ZA101218001010S dated 14.12.2018 in pursuance of GST ASMT- 13 bearing Ref. No. 1876 dated 13.09.2018 whereby and where under demand of Rs. 9,92,520/- has been made as tax (CGST and SGST) and Rs. 1,63,760 for non-filing of GSTR3B for August-2017 though the GSTR3B for F.Y. August-2017 already filed on 01.11.2018 and information was given but neither rectification was done nor GSTR3B, was looked into nor considered which ought to be rectified.

III) Mandamus:-Directing the Respondents to return the tax amount Rs. 9,92,520 which was recovered from ITC of Petitioner ex-parte arbitrarily in the teeth of the facts that demand for July-2017, September- 2017 to March- 2018 not were rectified but August- 2017 was not rectified/annulled without any rhyme or reasons.

IV) Mandamus:- Directing the Respondents to release the Bank account of petitioner from freezing for illegal interest.

V) Any other appropriate writ or direction may be issued which may be applicable in the teeth of the facts."

It is brought to our notice that vide impugned order dated 15.02.2021 (Annexure-7) passed by the Additional

Commissioner, Tax (Appeal) Central Division, Patna in Appeal Case No. AD100221002991W, the appeal of the petitioner against the order dated 14.12.2018 (Annexure-4) passed by the Assistant Commissioner of State Tax, Patliputra Circle, Patna in in Reference No. AZ101218001010S has been rejected merely on the grounds of being barred by limitation.

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

15.02.2021 (Annexure-7) passed by the Additional Commissioner, Tax (Appeal) Central Division, Patna in Appeal Case No. AD100221002991W, as also the order dated 14.12.2018 (Annexure-4) passed by the Assistant Commissioner of State Tax, Patliputra Circle, Patna in in Reference No. AZ101218001010S;

(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 16th 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)

P.K.P./Amrendra

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	