IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12374 of 2021

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Geeta Devi Wife of Barmeshwar Nath Prasad, Prop. of Shree Krishna Sales, Resident of Village- Dumrawn, Near Sheela Cinema, P.S. Dumraon, District- Buxar.

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Commercial Taxes Department, Government of Bihar, Patna.
2. The Joint Commissioner of Commercial Taxes Patna Circle Patna.
3. That Additional Commissioner of State Tax (Appeal) West Division, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Raghawendra Kumar Mishra, Advocate Mr. Nand Gopal Mishra, Advocate
For the Respondent/s	:	Mr.Vikash Kumar, SC 11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA)

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(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 : 15-07-2021

Petitioner has prayed for the following relief(s):

“i) Issuance of a appropriate writ in the nature of certiorari or any other appropriate writ/order or direction to quash the order dated 11/02/2021 (Annexure-) passed by the Additional Commissioner of State Tax (Appeal), West Division Patna. (Respondent No. 4) whereby the appeal preferred by the against the

assessment order dated 11/02/2021 has been rejected by the appellate authority i.e. respondent No. 4 on the ground of delay filing of appeal under the GST ACT -2017 submission of appeal under Petitioner has been rejected the appeal filed before the respondent no. 4 only due to delay in submission of appeal under the GST Act 2017 and further for issuance of an appropriate writ/order direction to respondent no. -4 to hear and dispose of the appeal so preferred by the petitioner, on merit.
(iii) To any other relief or reliefs for which the Petitioner is found entitled in the facts and circumstances of case."

It is brought to our notice that vide impugned order dated 11.02.2021 passed by the Additional Commissioner of State Tax (Appeal), West Division Patna in FORM GST APL-02, the appeal of the petitioner against the order dated 13.03.2019 passed by the Deputy Commissioner of State Tax, Buxar in GSTIN/ID No. -10BHTPD3485M1Z1 (Reference No. ZD100221008471D) 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 11/02/2021 passed by the Additional Commissioner of State Tax (Appeal), West Division Patna in FORM GST APL-02;

(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), West Division Patna on 30.07.2021 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 three 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)

(Prabhat Kumar Jha, J)

S.KUMAR/Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	20.07.2021
Transmission Date	