IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13357 of 2021

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Mahalas Construction Pvt. Ltd. a company registered under the Companies Act, 1956 having its place of office at Flat no. B/203, Second Floor, ANG Bihar Apartment, Ranitalab, Bhagalpur, Bihar- 813210.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar.
2. The Department of State Tax, Government of Bihar
3. Assistant Joint Commissioner, State Tax Department, Bhagalpur Circle, Government of Bihar
4. Commissioner, State Tax Department, Bhagalpur Circle, Government of Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Neeraj Kumar, Advocate Mr. Abhishek Singh, Advocate Mr.Vaibhava Veer Shanker, Advocate Mr. Sachin Kumar, Advocate Mr. Kumar Saurav, 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)

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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 : 04-08-2021

Petitioner has prayed for the following reliefs: -

(i) To issue a writ in the nature of writ of certiorari to quash and cancel the decision, order and direction of the Commissioner of State Tax, Bhagalpur, Government of Bihar (Respondent No. 4) dated 25.02.2021(Annexure-4) by which the Appeal filed by the petitioner against the demand of an amount of Rs 23,49,651.50/-(Rs. Twenty Three Lakhs Forty Nine Thousand Six Hundred Fift one and Paise Fifty only) raised by the Assistant Commissioner of State Tax, Bhagalpur, Government of Bihar under section 73(9) read with section 50(1) of Bihar Goods and Service Tax Act /CGST, 2017has been dismissed as time barred.

(ii) Be pleased to pass such other order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(iii) During the pendency of the present writ petition, the operation and implementation of the impugned order dated 25.02.2021 passed by the Respondent No.4 may be kept in abeyance.

(iv) To issue other appropriate writ or writs, order or orders, direction or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case;

It is brought to our notice that vide impugned order dated 25.02.2021 passed by the Additional Commissioner of State Tax, Bhagalpur in Appeal Case No. BHGST 38/20-21 (ARN -AD100121005746U), the appeal of the petitioner against the order dated 19.03.2020 passed by Respondent No.3 namely The

Assistant Commissioner of State Tax Department, Bhagalpur Circle, Govt of Bihar 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 25.02.2021 passed by the Additional Commissioner of State Tax, Bhagalpur in Appeal Case No. BHGST 38/20-21 (ARN -AD100121005746U) against the order dated 19.03.2020 passed by Respondent No.3 namely The Assistant Commissioner of State Tax Department, Bhagalpur Circle, Govt of Bihar**;**

(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 concerned on 20th 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	