IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 854 of 2021

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Rapid House a proprietary concern having its office at Ground Floor, Omkar Palace, Opp. Charak Chatravas, Makhania Kuan, Patna, through its proprietor Abhijeet Kumar aged about 32 years (Male) son of Shri.C.M. Prasad, resident of G.P. Verma Gali, Mundichak, District Bhagalpur.

-Versus-

1. The State of Bihar through the Commissioner of State Tax, having its office at Vikas Bhawan Patna.
2. Addl. Commissioner of State Tax (Appeal), West Division, Patna. Addl. Commissioner of State Tax (Appeal), East Division, Patna.
3. Joint Commissioner of State Tax, Patna North Circle, Patna.

…………… Respondents

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Appearance :

For the Petitioner/s	:	Mr. D.V. Pathy, Advocate Mrs. Manju Jha, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, S.C. 11

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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 : 24-06-2021

Petitioner has prayed for the following relief(s):

i) the order dated **12.10.**2019 (as contained in Annexure -5 series) passed by the respondent no. 3 for the month of August 2019 falling in the Financial Year 2019 - 20 be quashed.

> ii) the order dated 16.03.2020 (as contained in Annexure -7) passed by the respondent no.2 dismissing the Appeal No. GST/PDN - 03/2019 – 24 for the month of August 2019 falling in the Financial Year 2019 - 20 in liminie be quashed.
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> iii) the notice of demand dated 12.10.2019 as contained in Annexure -5 series) issued by the respondent no. 3 in form GST DRC - 07 be stayed.
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> iv) The notice of demand the notice of demand dated 10.02.2020 (as contained in Annexure 4 Series) issued by the respondent no. 3 attaching the account of the petitioner for recovery of the whole of the amount of tax in dispute be stayed.
>
> v) for granting any other relief (s) to which the petitioner is otherwise found entitled to."

The Appellate Authority has dismissed the petitioner's appeal only on the ground of delay, by more than fourteen days.

Shri D.V. Pathy assails the order of assessment on two counts- (a) it has been passed in violation of the statute as also the principles of natural justice, inasmuch as no notice was issued to the petitioner before carrying out the assessment proceedings; (b) the petitioner filed the return for the month of August, 2019 which the Assessing Officer ought to have accounted for prior to the passing of the impugned order dated 12th of October, 2019, pursuant to which the demand dated 10th of February, 2020 stands raised by the department.

Shri Vikash Kumar, learned Standing Counsel No. 11 states that the Assessing Officer has no power to condone the delay in filing the return, which was delayed by three days.

Having heard learned counsel for the parties, we are of the considered view that interest of justice would be best met if the matter is remanded back to the Appellate Authority for consideration of all the issues, subject matter of the present petition, including the issue of delay; petitioner having filed the return; the order passed without compliance of the statutory provision and the principles of natural justice.

Delay of fourteen days in filing the appeal, in our considered view, is not deliberate and stands substantially explained, inasmuch as at the relevant point in time the entire area was inundated, preventing the petitioner to have filed the appeal within the stipulated period of time.

As such, the delay of fourteen days in filing the appeal stands condoned and the petition stands disposed of in the following mutually agreeable terms:-

(a) We quash and set aside the impugned order dated 16th of March, 2020 passed by Respondent No. 2 namely Additional Commissioner of State Tax (Appeal), East Division, Patna in Appeal Case No. GST/PTN-03/2019-20 for the month of August 2019 falling in the Financial Year 2019-20;

(b) Matter is remanded to the Appellate Authority;

(c) 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;

(d) 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;

(e) 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.

(f) Petitioner undertakes to appear before the Appellate Authority Additional Commissioner of State Tax (Appeal), East Division, Patna on 26th of July, 2021 at 10:30 A.M., if possible through digital mode;

(g) 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;

(h) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

(i) During pendency of the appeal, no coercive steps shall be taken against the petitioner.

(j) The Appellate Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(k) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(l) The Appellate Authority shall decide the appeal on merits and pass a speaking order expeditiously, preferably within a period of two months from the date of appearance of the petitioner;

(m) All issues raised before this Court are left open to be considered and examined by the Appellate Authority;

(n) The return filed by the petitioner shall also be accounted for prior to passing of the order;

(o) Liberty reserved to the petitioner to challenge the order, if required and desired;

(p) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(q) 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;

(r) We have not expressed any opinion on merits and all issues are left open;

(s) 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/PKP-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	