IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10583 of 2020

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M/s Electro India, through its authorized Signatory Rahul Kanodia, aged about 29 years, Male, Ward No.22, near Shyam Kunj, Chatti Gaushala, P.S. Begusarai Town, District Begusarai, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
2. The State Commissioner, G S T, Bihar.
3. The Additional Commissioner of State Tax (Appeal) Darbhanga Division, Darbhanga.
4. The Assistant Commissioner, State Tax, Begusarai Circle, Begusarai.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhat Ranjan, 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)

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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 : 23-06-2021

Petitioner has prayed for the following relief(s):

"(i) Quashing of the order dated 28.02.2020 issued by the Additional Commissioner of State Tax (Appeal) by which the appeal preferred by the petitioner under Rule 108(1) of the GST 2017 against the exparte order dated 05.11.2018 passed by Assistant Commissioner of State Tax, Begusarai has been rejected solely on the ground that there is delay in submission of the appeal; and

(ii) Direction upon the respondent no. 3 to consider the appeal of the petitioner filed on

24.02.2020 under Rule 108(3) on merits and pass final orders in connection with the same."

It is brought to our notice that vide impugned order dated 28th of February, 2020 passed by the Additional Commissioner of State Tax (Appeal) in GSTIN/Temp ID/UIN 10BIKPK7916E1ZH [Reference No. ZA1002200297554] the appeal preferred by the petitioner against the *ex parte* order dated 5th of November, 2018 passed by Assistant Commissioner of State Tax, Begusarai, stands rejected only on the ground of delay.

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 28th of February, 2020 passed by the Additional Commissioner of State Tax (Appeal) in GSTIN/Temp ID/UIN 10BIKPK7916E1ZH [Reference No. ZA1002200297554];

(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 26th of July, 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) Liberty reserved to the petitioner to challenge the order, if required and desired;

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

(n) 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;

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

(p) 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	