IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 10645 of 2020
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M/s Prakash Udyog, a proprietorship firm through its sole proprietor, Nikhil Singh, aged about 41 years (male), Son of Krishna Prasad Keshari, Resident of Jagat Kunj, East Boring Canal Road Alankar Business Centre, Buddha Colony, Patna Bihar 800001

.... Petitioner

-Versus-

1. The State of Bihar, through the Principal Secretary, Commercial Tax Department, Government of Bihar, Patna.
2. The Principal Secretary, Commercial Tax Department, Government of Bihar, Patna.
3. The Additional Commissioner, Commercial Tax Department, Government of Bihar, Patna.
4. The Joint Commissioner, Commercial Tax Department, Magadh Division, Gaya
5. The Deputy Commissioner, Commercial Tax Department, Integrated Check post Dhabi, Gaya.
6. The Commercial Tax Officer, Integrated Check Post, Dhabi, Gaya

…………… Respondents

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Appearance :
For the Petitioner/s : Mr. Avinash Shekhar, Advocate
Mr. Suraj Samdarshi, Advocate
Mr. Piyush Ranjan, 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 : 23-06-2021

Petitioner has prayed for the following relief(s):

"i) To issue an appropriate writ, order or direction in the nature of *certiorari* for quashing of order dated 22.10.2019 **(Annexure 7)** passed by the Commercial Taxes Tribunal, Bihar Patna in Appeal Case No. GY-230/2017, whereby the well-founded appeal of the petitioner against the order dated 23.01.2017 passed by the Joint Commissioner of Commercial Taxes (Appeal), Magadh Division, Gaya, has been rejected merely on the grounds of being barred by limitation.

ii) To issue an appropriate writ, order or direction remanding Appeal Case No. GY-230/2017 back to the Commercial Taxes Tribunal for hearing and disposal on merits.

iii) This Hon'ble Court may adjudicate and hold that Commercial Taxes Tribunal could not have dismissed the appeal of the petitioner merely on the grounds of limitation.

iv) This Hon'ble Court may adjudicate and hold that the Commercial Taxes Tribunal has erroneously held that the appellate authority had send the impugned order to the petitioner on the same date.

v) This Hon'ble Court may adjudicate and hold that the Commercial Taxes Tribunal has erroneously held that the petitioner was present at time of hearing before the Appellate Authority.

vi) This Hon'ble Court may award the cost of litigation and suitable compensation to the Petitioner for the loss and damages caused on account of the illegal and arbitrary actions of the Respondent Authorities.

vii) To grant any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case.”

It is brought to our notice that vide impugned order dated 22nd of October, 2019 (Annexure-7) passed by the Commercial Taxes Tribunal, Bihar, Patna in Appeal Case No. GY-230/2017, the appeal of the petitioner against the order dated 23.01.2017 passed by the Joint Commissioner of Commercial Taxes (Appeal), Magadh Division, Gaya in Appeal Case No. GY/CCP/STA-16/14-15 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 22nd of October, 2019 (Annexure-7) passed by the Commercial Taxes Tribunal, Bihar, Patna in Appeal Case No. GY-230/2017 as also the order dated 23.01.2017 passed by the Joint Commissioner of Commercial Taxes (Appeal), Magadh Division, Gaya in Appeal Case No. GY/CCP/STA-16/14-15;

(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 i.e. Joint Commissioner of Commercial Taxes (Appeal), Magadh Division, Gaya 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	