IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15350 of 2021

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Dhananjay Kumar Singh, S/o Rangnath Singh, R/o Village - Bhakura, P.O. - Bhakura, Lauhar Farna, District- Bhojpur, Pin - 802315.

... ... Petitioner/s

Versus

1. The State of Bihar, through the Commissioner - cum - Principal Secretary, Commercial Tax Department, Government of Bihar, Patna.
2. The Commissioner - cum - Principal Secretary, Commercial Tax Department, Government of Bihar, Patna.
3. The Additional Commissioner of State Tax (Appeal), Patna West Division, Patna.
4. The Deputy Commissioner of State Tax, Shahabad Circle, Ara.
5. The Assistant Commissioner of State Tax, Shahabad Circle, Ara.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anurag 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)

Date : 02-09-2021

The petitioner has prayed for the following relief/s :-

i) For issuance of writ in the nature of Certiorari quashing the order dated 07.03.2020 issued vide Ref. No. ZA100320010014II for Tax Period Mar - 2019 (FY - 2018-19) by ACST, State Tax, Sahabad Circle, Ara under section 74(9) of BGST Act whereby and where under an amount of Rs. [illegible]/- has been imposed without providing a fair opportunity of hearing by way of not allowing to submit a copy of agreement for considering the rate of tax imposed to the petitioner and without finding the nature of work contract, tax was imposed.

ii) For issuance of an appropriate order/direction in the nature of *Certiorari* quashing the Demand Notice bearing Reference No. ZA100320010814H dated 07.03.2020 under Rule 142(5) in the form of GST DRC-07 whereby and where under petitioner was intimated to deposit the tax amount of Rs. 3,66,600/- for the month of Mar-2019(FY-2018-19).

iii) For issuance of writ in the nature of Certiorari for setting aside order dated 23.01.2021 passed in Appeal bearing reference no. ZD1001210204O1Q by Additional Commissioner of State Tax (Appeal), Patna West Division, Patna whereby and where under the appeal filed by the petitioner has been rejected on the ground of delay in submission of appeal.

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iv) For issuance an appropriate order/direction in the nature of *Mandamus* directing the Respondent Authorities not to take any coercive action against the Petitioner until the disposal of this writ petition;

v) For any other relief or reliefs for which the Petitioners maybe found entitled to in the facts and circumstances of this case;

vi) Or may pass any other suitable order/orders which your Lordships may deem fit and proper in facts and circumstances of this case.

It is brought to our notice that vide impugned order dated 23.01.2021 passed by the Additional Commissioner of State Tax (Appeal) under Form GST APL-02 in GSTIN No. 10ARQPS4925B1ZX, the appeal of the petitioner against the order dated 07.03.2020, issued vide Ref; No. ZA100320010814H for Tax Period Mar-2019 (FY-2018-19) by the Assistant Commissioner of State Tax, Sahabad, Circle, Ara and Demand Notice dated 07.03.2020 bearing Reference No. ZA100320010814H, 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 23.01.2021 passed by the Additional Commissioner of State Tax (Appeal) under Form GST APL-02 in GSTIN No. 10ARQPS4925B1ZX;

(b) The appeal is restored to its original file and number;

(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 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;

(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 concerned on 11th of October, 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 expeditiously, preferably within a period of two months from the date of appearance of the petitioner;

(m) The Appellate Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

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

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

(p) 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;

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

(r) 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/Ashwini/

AFR/NAFR	
CAV DATE	
Uploading Date	10.09.2021
Transmission Date	