IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17937 of 2021

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M/s Seemanchal Auto Zone, a partnership firm having its address at Opposite Pole Factory, Maranga, District- Purnea, through its authorised partner Chaturbhuj Prasad Chourasiya, male, aged about 43 years, son of Late Gulay Prasad Chourasiya, resident of Maheshpur, Police Station- Korha, District- Katihar

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Commercial Tax Department, Bihar having its office at Vikas Bhawan, Bailey Road, Patna, Bihar.
2. The Additional Commissioner of State Taxes (Appeal), GST Commercial Tax Department, Purnea Division, Purnea, Bihar.
3. The Joint Commissioner, GST, Commercial Tax Department, Purnea, Bihar.
4. The Deputy Commissioner, GST, Commercial Tax Department, Purnea, Bihar.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Parijat Saurav, Advocate
For the Respondent/s : Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJAN GUPTA

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-10-2021

Petitioner has prayed for the following relief(s):

"1(i) For issuance of a writ in the nature of Certiorari or any other appropriate writ, order or direction to set aside the order dated 09.01.2021 (Annexure 7) passed in Appeal No. (ARN) AD100720000509R passed by the Respondent No.-2 the appellate authority, whereby the appeal of the petitioner was dismissed solely on the ground of delay without examining the merits of the case.

(ii) For issuance of the writ in the nature of

Certiorari or any other appropriate writ, order or direction for quashing of order dated 20.01.2020 (Annexure 3) and 22.02.2020 (Annexure 5) passed by the Respondent No.-4 under section 73 of the GST Act and the consequent demand order dated 22.02.2020 (Annexure 5) issued against the petitioner for the period of April 2018 to March 2019 levying tax of Rs. 41,68,868/- (Rupees Forty one lakh sixty eight thousand eight hundred and sixty eight only) and interest of Rs. 5,00,264/- (Rupees Five lakhs two hundred and sixty four only) and penalty of Rs. 4,16,886/- (Rupees Four lakh sixteen thousand eight hundred and eighty six only).

(iii) Be pleased to stay the operation of impugned order and demand dated 22.02.2020 (Annexure 5) passed by the Respondent No.-4 against the petitioner, during the pendency of the writ application.

(iv) In alternate, be please to remand back the appeal of the petitioner to the appellate authority i.e. Respondent No.-2, after condoning the delay in filing the appeal which was due to covid-19 pandemic lockdown and restriction, and be pleased to direct Respondent No.-2 to decide the appeal of the petitioner on merit."

It is brought to our notice that vide impugned order dated 9th of January, 2021 (Annexure-7) passed by the Additional Commissioner of State Taxes (Appeal), Purnea Division, Purnea, Bihar (Respondent No.-2), in Appeal Case

No. (ARN) AD100720000509R, the appeal of the petitioner against the order dated 20.01.2020 (Annexure-3) passed by the Deputy Commissioner of State Tax, Purnea Division, Purnea (Respondent No. 4), order under Section 73 dated 22nd of February, 2020 in Reference No. ZA100220023953A (Annexure-5) and summary of the order in Form GST DRC-07 dated 22nd of February, 2020 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 9th of January, 2021 (Annexure-7) passed by the Additional Commissioner of State Taxes (Appeal), Purnea Division, Purnea, Bihar (Respondent No.-2), in Appeal Case No. (ARN) AD100720000509R;

(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 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 on 15th of November, 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)

(Rajan Gupta, J)

P.K.P./Amrendra

AFR/NAFR	
CAV DATE	
Uploading Date	22.10.2021
Transmission Date	