IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18365 of 2021

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Welspun Aunta Simaria Project Pvt. Ltd. having its principal place of business at 205, Arya Enclave, Singhaul, at NH- 31, Begusarai, Barauni Main Road, Bihar 851100 through its Director Sri Vinoo Sanjay, son of Sri S. Natarajan, R/o, 1105, Carnation, Dosti Acres, Wadala, Mumbai.

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Ministry of Finance, Department of Revenue, having its office at Vikash Bhawan, Baily Road, Patna- 800015.
2. The Assistant Commissioner, State Tax, Begusarai, VIP Road. In front of Gandhi Stadium, Nawab Chowk, Pokhariya, Ward No. 39, Chitra Gupta Nagar, Begusarai, Bihar- 851104.
3. The Additional Commissioner (Appeals), Darbhanga Division, Darbhanga, Bihar

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Aryan Sinha, Advocate
Mr. Ravi Shankar Roy, Advocate
Mr. Jitesh Singh, Advocate
Mr. Puneet Siddhartha, Advocate
For the Respondent/s : Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE A. M. BADAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-10-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

A) Writ in the nature of certiorari or any other appropriate writ/s, order/s, direction/s for quashing the following:

(i) Order dated 28.07.2021 passed in Appeal No. AD100321003470 by Respondent No. 3 .

B) A writ in the nature of mandamus or any other appropriate writ/s, order/s, direction/s for :

(ii) Directing Respondent No.3 that the appeal filed against Order dated 11.01.2021 be taken on record as having been filed on 06.03.2021 along with a certified copy of the said order and a final acknowledgment in terms of Rule 108(3) of the Bihar Goods and Services Tax Rules, 2017, be issued to the Petitioner.

C) A writ in the nature of mandamus or any other appropriate writ/s, order/s direction/s for the following reliefs:

(ii) Directions to the respondent authorities to refrain from acting upon the Order dated 28.07.2021 passed in Appeal No. AD100321003470 by Respondent No. 3 and consequently stay the proceedings, if any initiated for recovering any tax, interest and penalty, or adjusting the alleged demands against the refunds otherwise due and payable to the Petitioner till the pendency of the instant case.

(iii) Any other relief/s to which the petitioner is found entitled to.

Having heard learned counsel for the parties, we are inclined to allow Prayer (B), more so for the reason explained by the petitioner for not filing the certified copy of the impugned order along with the appeal. The Appellate Authority, in our considered view ought to have been indulgent, more so in view of the ongoing Pandemic Covid-19.

As such, we dispose of the present petition in the following terms:-

(a) We quash and set aside the impugned order dated 28th of July, 2021, passed by the Additional Commissioner, State Taxes (Appeal), Darbhanga Division, Darbhanga

(Respondent No. 3) in Appeal No. AD1003210013470 (Annexure-M) and the order in Form GST APL-02 dated 29.07.2021 in Reference No. ZD100721002726Y;

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

(c) The certified copy of the order, impugned therein, be filed afresh;

(d) Petitioner undertakes to do so on the date fixed by this Court;

(e) Petitioner is directed to appear before the Appellate Authority on 15th of November, 2021, at 10:30 A.M. and file certified copy of the impugned order;

(f) Shri Vikash Kumar, learned Standing Counsel No. 11 states that, in the event certified copy is placed on record, the issue of limitation shall not be allowed to come in the way of the Appellate Authority in hearing and deciding the appeal on merits.

(g) Shri Vikash Kumar, learned S.C. 11 further states that petitioner is duty bound to comply with the condition of pre deposit of the amount, as a condition precedent for filing of the appeal.

(h) Shri Punit Siddharth, learned counsel for the petitioner states that such amount already stands deposited.

(i) Be that as it may, we clarify that the petitioner, is under an obligation to deposit the pre-deposit amount, required for filing of the appeal.

(j) However, 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;

(k) 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.

(l) The Appellate Authority shall decide the appeal on merits after complying with the principles of natural justice;

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

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

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

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

(q) The Appellate Authority shall decide the appeal on merits expeditiously, preferably within a period of four weeks from the date of appearance of the petitioner;

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

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

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

(u) 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;

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

(w) 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)

(A. M. Badar, J)

P.K.P./Amrendra

AFR/NAFR	
CAV DATE	
Uploading Date	03.11.2021
Transmission Date	