IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18849 of 2021

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Ravi Prakash Banka S/o Late Narayan Prasad Banka Proprietor of M/s P K Trading Company having its principal place of business at 266, Purani Bazar, Jhajha, Jamui, Bihar, 811308.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Commissioner-cum-Principal Secretary, Commercial Taxes, Commercial Taxes Department, State of Bihar, Patna.
3. The Additional Commissioner (Appeal), State Tax, Bhagalpur Division, Bihar.
4. The Joint Commissioner (Appeal), State Tax, Bhagalpur Division, Bihar.
5. The Assistant Commission of State Tax, Jamui/Bhagalpur, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Navendu Kumar, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (SC-11)
		Mr. Sriram Krishna, A.C. to S.C. 11

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 15-11-2021

Heard learned counsel for the parties.

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

"(i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing the order under reference No. ZD 100221004877X dated 06.02.2021 issued under section 73 of the CGST Act read with DRC-07 (digital summary of the demand order) under Rule 142(5) of the CGST Rules by the Ld. ACST directing the petitioner to pay the said amount of alleged wrongly availed or utilized ITC of IGST of Rs. 12,08,483/- along with interest of Rs. 1,23,166/- plus penalty of Rs. 1,20,848/-, i.e. Rs. 14,52,497/- on wholly erroneous grounds and without considering the case of the petitioner, especially in view of the fact that the petitioner's case was covered under the provisions of Rule 36(4) of the CGST Rules in terms of Notification No. 30/2020 CT dated 3rd April 2020.

(ii) To issue an appropriate writ, order or direction in the nature of certiorari for quashing the Show-cause Notice, issued by the Ld. Assistant Commissioner of State Tax, Jamui, Bhagalpur, Bihar under Reference No. ZD101220025945Y dated 26.12.2020 under section 73 of the CGST Act as well as the SGST Act, read with DRC-01 (digital summary of show cause notice) under rule 100 (2) & 142(1)(a) of the CGST Rules, 2017 vide Reference No. ZD101220025945Y dated 26.12.2020 for rejection of claim of Input Tax Credit of IGST for the period of April to June 2020 directing to furnish a reply along with supporting documents as evidence in support of claim of IGST of Rs. 12,08,483/- alleged to have been wrongly availed or utilized in GSTR-3B;

(iii) To issue an appropriate writ, order or direction in the nature of certiorari for quashing the order of the Ld. Joint Commissioner of State Tax, Jamui, Bhagalpur, Bihar, appellate authority, dated 05.08.2021 is bad in law inasmuch as the same has been passed in a mechanical manner without any application of mind and without dealing with the grounds raised by the petitioner;

(iv) for any such other order orders for which the petitioner is entitled."

It is brought to our notice that vide impugned order dated 5th of August, 2021 (Annexure-4) passed by the Additional Commissioner of State Tax on behalf of Appellate Authority in Reference No. ZD1008210005163 [Form GST APL-02], the appeal of the petitioner against the order dated 6th of February, 2021, passed by the Assistant Commissioner of State Tax, Jamui/Bhagalpur, Bihar, in Reference No. ZD100221004877X (Annexure-2) has been rejected merely on the grounds of non-receipt of certified copies. The order is *ex parte* in nature.

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 5th of August, 2021 (Annexure-4) passed by the Additional Commissioner of State Tax on behalf of Appellate Authority in Reference No. ZD1008210005163 [Form GST APL-02] (Annexure-4);

(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 13th of December, 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)

Veena/PKP

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA