IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19273 of 2021

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M/s Dulahan Shringar Proprietor Shop having place of business, C/o- Neeraj, Bishanpur Road, Near Kali Asthan Chowk, Begusarai, through its proprietor namely Shaikh Mahfuz Samsher, aged about- 29 years, Gender- Male, S/o- Md. Samsher Shaikh, Chakballi, P.O.- Noorpur, P.S. Barauni- District- Begusarai Pin- 851210

... ... Petitioner/s

Versus

1. The State of Bihar though the Principal Secretary-cum- Commissioner Department of State Taxes, Govt. of Bihar, Patna.
2. The Joint Commissioner of State Taxes, at Begusarai in Darbhanga Division.
3. The Additional Commissioner of State Taxes Appeal Darbhanga Division Darbhanga.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Saroj Kumar Sharma, Advocate Ms. Kiran Kumari Sharma, Advocate
For the Respondent/s	:	Mr. Vivek Prasad, G.P.-7 Ms. Roona, AC to 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 : 22-11-2021

Heard learned counsel for the parties.

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

(a) For issuance of writ in the nature of Certiorari for quashing of the order passed by the Additional Commissioner state taxes (appeal), Darbhanga, Division-Darbhanga(Respondent no. 3), in Appeal No.-AD-1007210007170 dated 30-07-2021(**Annexure-6)** under section 107 of the Bihar Goods and Service Tax Act, 2017 (hereinafter referred to as the Bihar Act 2017 for short);

(b) For issuance of writ in the nature of Certiorari for quashing of the ex-parte order bearing reference number ZA100120038730H dated 13.01.2020 **(Annexure-5)** passed by the respondent no. 2 i.e The joint commissioner Taxes, Begusarai under section 29 of the Bihar Goods And Service Tax Act,2017 (hereinafter referred to as the Bihar Act 2017 for short) read with Rule 22 of the Bihar Goods And Services Tax Rules, 2017(hereinafter referred to as the " Bihar rules 2017" for short.

(c) For issuance of writ in the nature of mandamus directing the respondent's specially respondent no. 2 to restore the registration of the petitioner with effect from the month of January 2019-20 So that petitioner may file all the pending returns since January 2020 to till date and also discharge liability of tax and interest (attracted if any) in accordance with the provisions of Bihar Act 2017 and the Central goods And Service Tax Act, 2017 (here in after referred to as the Central Act, 2017 for short).

(d) For further holding and declaration that the cancellation of registration of the petitioner by virtue of an ex-party order passed by the respondent no.- 2 is violative of principles of Natural Justice and the petitioner having already filed pending returns and discharged tax liability till the month of December 2019 is entitled to restoration of registration in terms of Rule 23 (1) First Proviso to the Bihar Rules, 2017.

(e) For grant of any other relief/reliefs to which the petitioner is found entitled in the fact and circumstance of this case.

It is brought to our notice that vide impugned order dated 30.07.2021 (Annexure-6) passed by the Respondent no.3, namely the Additional Commissioner of State Taxes Appeal, Darbhanga Division, Darbhanga in Appeal No. AD1007210007170, the appeal of the petitioner against the order dated 13.01.2020 (Annexure-5) passed by Respondent no.2, namely the Joint Commissioner of State Taxes, Begusarai in Darbhanga Division in reference no. ZA100120038730H has been rejected merely on the grounds of non-filing of the certified copy. 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 order dated 30.07.2021 (Annexure-6), passed by the Respondent no.3, namely the Additional Commissioner of State Taxes Appeal, Darbhanga Division, Darbhanga in Appeal Case No. AD1007210007170;

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

(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 i.e. Respondent no.3, the Additional Commissioner of State Taxes Appeal, Darbhanga Division, Darbhanga on 22nd of December, 2021 at 10:30 A.M., if possible through digital mode and file the required certified copy;

(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)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	23.11.2021
Transmission Date	