IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1822 of 2022

Umesh Kumar Son of Laxmi Narayan Singh Resident of Ratanamaniya, Pirapur, Muzaffarpur, Bandra, District- Muzaffarpur- 843115, Bihar.

... ... Petitioner/s

Versus

1. State of Bihar through the Commissioner of State Tax, having its office at Vikas Bhawan Bailey Road, Patna.
2. Addl. Commissioner of State Tax (Appeal), Muzaffarpur.
3. Joint Commissioner of State Tax, Muzaffarpur East, Bihar.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr.D.V.Pathy, Advocate
		Mrs. Manju Jha, Advocate
For the Respondent/s	:	Mr.Vivek Prasad (GP-7)

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 08-02-2022

Heard learned counsel for the parties.

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

i) the order dated 17.08.2021 (as contained in Annexure –5) passed by the respondent no. 2 dismissing the appeal in liminie only on the solitary ground of delay in filing of the appeal be quashed.

ii) the order dated 06.08.2019 (as contained in Annexure –3) cancelling e registration under Section 29 of the Bihar Goods and Services Tax Act, 2017 (hereinafter called the Act) passed ex parte without grant of opportunity to of being heard be quashed.

iii) the respondent no. 2 be directed to restore registration under Section 22 of the Act to enable filing of return and payment of tax in accordance therewith.

iv) for granting any other relief (s) to which the petitioner is otherwise found entitled to.

In relation to the assessment proceedings, petitioner could not file the return, which prompted the Assessing Officer namely Respondent No. 3 namely Joint Commissioner of State Tax, Muzaffarpur East, Bihar to cancel the Registration vide impugned order dated 24.08.2019 in Reference No. ZA100819034248J (Annexure-3). The Appellate Authority i.e. Additional Commissioner of State Tax (Appeal), Muzaffarpur (Respondent No. 2) has dismissed the petitioner's appeal vide order dated 17.08.2021 passed in Reference No. ZD1008210086600 (Annexure-5), solely on the ground of delay.

Having heard learned counsel for the parties at length, we are of the considered view, more so in view of the provisions of Section 30 of the Bihar Goods and Service Tax Act, 2017, that the impugned order 24.08.2019 passed in Reference No. ZA100819034248J (Annexure-3) by Respondent No. 3 Joint Commissioner of State Tax, Muzaffarpur East, Bihar and the order dated 17.08.2021 passed by Additional

Commissioner of State Tax (Appeal), Muzaffarpur (Respondent No. 2) in Reference No. ZD1008210086600 (Annexure-5) needs to be quashed and set aside. The Appellate Authority, ought to have been indulgent, in condoning the delay, more so on account of the prevalent current Pandemic Covid-19. The Hon'ble Apex Court in several of its orders has extended the period of limitation, in complying with the statutory requirement in initiating the proceedings before the judicial forum. Perhaps, this fact has escaped the attention of the Appellate Authority. We are also of the considered view that the Assessing Officer, in view of the bona fides of the petitioner ought to have invoked its power under Section 30 of the Act and by withdrawing the order of cancellation of Registration, afforded opportunity to the petitioner to comply with the statutory provisions not only by filing the returns, but also depositing the amount in terms of and under the provisions of the Act. We are satisfied of the petitioner's bona fides of doing so expeditiously.

Shri D.V. Pathy, learned counsel for the petitioner, states that within next two weeks petitioner shall file the returns; deposit the component of tax as also the interest, if any payable thereupon; and comply with the order passed by the Assessing

Officer.

Statement accepted and taken on record.

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

(a) We quash and set aside the impugned order 24.08.2019 passed by Respondent No. 3, namely Joint Commissioner of State Tax, Muzaffarpur East, Bihar in Reference No. ZA100819034248J (Annexure-3) and the order dated 17.08.2021 passed by Additional Commissioner of State Tax (Appeal), Muzaffarpur (Respondent No. 2) in Reference No. ZD1008210086600 (Annexure-5);

(b) Petitioner shall appear before the Assessing Officer on 2nd of March, 2022 at 10:30 A.M. before which date he shall fully comply with the provisions of law;

(c) The Assessing Authority shall decide the case on merits after complying with the principles of natural justice;

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

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

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

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

(h) The Assessing Authority shall decide the case on merits expeditiously, preferably within a period of two months from the date of appearance of the petitioner;

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

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

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

(l) 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;

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

(n) If possible, proceedings during the time of current Pandemic [Covid-19] be conducted through digital mode;

The instant petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, 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)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	11.02.2022
Transmission Date	