IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4380 of 2022

==

M/s Agarwal Computer, Mahila College Road, Binodpur, Katihar-854105 (Bihar) through its Proprietor Sri Mayank Agarwal (Male) aged about 43 Years, Son of Mali Ram Agarwal, Resident of Kalibari, Binodpur, P.O. Katihar-854105, P.S. and District-Katihar.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner State Tax Cum Secreary, BIhar, Department of Commercial Tax, New Secretariat, Patna.
2. The Additional Commissioner State Tax (Appeal), Purnea Division, Purnea.
3. The Assistant Commissioner of State Tax, Katihar Circle, Katihar (Bihar).

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr.Ramesh Kumar Agrawal, 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 : 05-04-2022

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

> (i) For issuance of an appropriate writ(s), order(s) or direction(s) in the nature of writ of certiorari quashing the impugned Assessment order and Rectification order both dated 10.02.2021 (Annexure- 3 & 3/A) passed by the respondent Assistant Commissioner of State Tax Act, 2017 (herein after referred to as 'the BGST Act, 2017 only) read with Central Goods and Service Tax Act, 2017 (herein after referred to as 'the CGST Act, 2017 only') for the period 2018-19 by which Rs. 1,90,180.96 has been

assessed as tax, Rs. 83,679.61 has been assessed as interest and Rs. 24,883.77 has been imposed as penalty. Thus, total additional liability of Rs. 2,98,744.34 has been created, which is arbitrary and illegal.

(ii) For issuance of an appropriate writ, order or direction for quashing the appellate order dated 17.08.2021 (Annexure- 5) passed by the respondent Appellate Authority that is Additional Commissioner State Tax (Appeal), Purnea Division, Purnea by which appeal filed by the petitioner has been rejected on a technical ground that certified copy of the impugned assessment order dated 10.02.2021 has not been filed within seven days of the filing of appeal.

(iii) For issuance of appropriate writ, order or direction restraining the respondents from taking or initiating any coercive action against the petitioner and or its agents/officials etc, and

(iv) To grant such other consequential relief(s) to the petitioner, which this Hon'ble Court may find the petitioner to be entitled to in equity and/or in law in the facts and circumstances of the case."

It is brought to our notice that vide impugned order dated 17.08.2021 (Annexure-5) passed by the Additional Commissioner of State Tax (Appeal), Purnea Division, Purnea the appeal of the petitioner against the assessment order and rectification order both dated 10.02.2021 (Annexure-3 & 3/A), passed by the Assistant Commissioner of State Tax, under Section 73 of the Bihar Goods and Service Tax Act, 2017 and Central Goods and Service Tax Act, 2017 for the period 2018-19 by which Rs. 1,90,180.96 has been assessed as tax, Rs. 83,679.61 has been assessed as interest and Rs.24,883.77 has been imposed as penalty the total additional liability created being Rs.2,98,744.34, has been rejected on a technical ground that certified copy of the impugned assessment order dated 10.02.2021 has not been filed within seven days of the filing of the appeal.

In our considered view, the delay stands sufficiently explained on account of COVID restrictions.

Undisputedly, in view of the directions issued by Hon'ble Apex Court from time to time, in suo motu case No.3/20, the period of limitation ought to have been condoned.

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 17.08.2021 (Annexure-5) passed by the Additional Commissioner of State Tax (Appeal), Purnea Division, Purnea;

(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 contentions 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 concerned on 20th of April, 2022 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)

K.C.Jha/-DKS

AFR/NAFR	
CAV DATE	
Uploading Date	15.04.2022
Transmission Date	