IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4763 of 2022

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Madan Kumar, Son of Rajdeo Roy, A proprietor/Civil Contractor having its place of business at Ladugarh, Janakinagar, Purnea, Bihar- 854202, resident of at- Ladugarh, Jankinagar, Police Station- Janki Nagar, District- Purnea, Bihar, 854202.

... ... Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary- Cum- Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeal) Purnea Division, Bihar.
3. The Deputy Commissioner of State Taxes Purnea Circle, Bihar.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Surendra Singh, Advocate
For the Respondent/s : Mr.Vikash Kumar (SC11)

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

Date : 05-04-2022

The petitioner has prayed for the following relief/s :-

(i). To issue an appropriate writ preferably in the nature of certiorari for setting aside the order dated 27.10.2021 passed by the Additional Commissioner of State Taxes (Appeal) Purnea Division, Bihar in Appeal (ARN) No.AD100921000126X, whereby and whereunder the Appeal preferred by the petitioner against order dated 25.01.2021 has been dismissed.

(ii) To issue an appropriate writ preferably in the nature of certiorari for setting aside the order dated 25.01.2021 passed by the Deputy Commissioner of State Taxes, Purnea Circle, Bihar, whereby and whereunder demand of Rs.50,94,663.58 (Rupees Fifty Lakhs Ninety Four thousand Six hundred Sixty three and fifty eight paise only) has been created for payment by the petitioner for the period April 2019 to March 2020 under Section 73 of Bihar Goods and Service Tax Act, 2017 (hereinafter referred to as Bihar GST Act, 2017).

(iii) To hold and declare that the aforesaid demand created by the Respondent no.3 is without jurisdiction and

(iv) To grant any other reliefs for which the petitioner may be found entitled to in the peculiar facts and circumstances of the case.

It is brought to our notice that vide impugned order dated 27.10.2021, passed by the Respondent No. 2, namely, the Additional Commissioner of State Taxes (Appeal), Purnea Division, Bihar, in ARN No.-AD100921000126X; the appeal of the petitioner against the order dated 25.01.2021, passed by Respondent No. 3, namely, the Deputy Commissioner of State Taxes, Purnea Circle, Bihar in GSTIN -10CJRPK6948RIZA; and summary of order dated 25.01.2021 in Form GST DRC-07(Annexure-3 Reference No.ZD100121022223M) for the period April, 2019 to March, 2020, has been rejected by a cryptic, misconceived and non-speaking order.

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 27.10.2021, passed by the Respondent No. 2, namely, the Additional Commissioner of State Taxes (Appeal), Purnea Division, Bihar, in ARN No.-AD100921000126X;

(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) The petitioner undertakes to deposit twenty per cent of the amount of the demand raised before the Assessing Officer. This shall be done within four weeks.

(e) This deposit shall be without prejudice to the respective rights and contention of the parties and subject to the order passed by the Assessing Officer. 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;

(f) 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.

(g) Petitioner undertakes to appear before the Appellate Authority concerned on 20.04.2022 at 10:30 A.M.;

(h) 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;

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

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

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

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

(m) 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;

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

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

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

(q) 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;

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

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)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	08.04.2022
Transmission Date	