IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5978 of 2022

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M/s D.K. Construction through its proprietor, Ranjay Kumar Singh, aged about 56 year (male), son of Shri Nath Singh, resident of Village Instasagar, P.O. Dhadhour, P.S. Sikndra, District Jamui.

... ... Petitioner/s

Versus

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

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anand Kishore Sinha, Advocate

For the Respondent/s : Mr.Vivek Prasad (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 : 25-04-2022

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 of quashing order contained in memo no. 169 dated 27.07.2021 read with FORM GST APL 02 reference no. ZD 100721002531B passed by Respondent Additional Commissioner (Appeal), State Tao, Bhagalpur Division, Bhagalpur in Appeal Case no. (ARN) AD1006210014109 whereby the appeal of the petitioner against the ex-parte adjudication order dated 04.03.2020 passed by the Respondent

Assistant Commissioner of State Tax Jamui Code, Jamui under section 74 of the BGST Act 2017 pertaining to the period 01.10./2018 – 31.03.2019 and directing the petitioner to deposit Tax of Rs. 1,17,281/ Interest of 24,350/- and penalty of Rs. 1,17,281/ total Rs. 2,58,912/-) has been rejected dining COVID 19 pandemic period merely on account of non-supply of certified copy of the impugned order and delay.

ii) During the pendency of this writ application the Respondents may be directed not to take any coercive steps against the petitioner for recovery of the disputed tax amount.

iii) This Hon'ble Court may further adjudicate and hold that the order of appellate authority dated 27.07.2021 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 merely on the grounds of delay and non-supply of certified copy of the impugned order.

iv) To grant any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case."

It is brought to our notice that vide impugned order dated 27.07.2021 passed by Respondent No. 3 namely the Additional Commissioner (Appeal), State Tax, Bhagalpur Division, Bhagalpur in Appeal Case No. (ARN) AD1006210014109; order dated 27.07.2021 in Form GST APL-02, the appeal of the petitioner against the order dated 04.03.2020 passed by the Assistant Commissioner of

State Tax, Jamui Circle, Jamui has been rejected merely on the grounds of being barred by limitation as also non-supply of certified copy of the impugned order.

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

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 27.07.2021 passed by Respondent No. 3 namely the Additional Commissioner (Appeal), State Tax, Bhagalpur Division, Bhagalpur in Appeal Case No. (ARN)

AD1006210014109 and the order dated 27.07.2021 in Form GST APL-02;

(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) Further the petitioner undertakes to additionally deposit ten per cent of the amount of the demand raised before the Appellate Authority. 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 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;

(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 i.e. Additional Commissioner (Appeal), State Tax, Bhagalpur Division, Bhagalpur on 16th of May, 2022 at 10:30 A.M., if possible through digital mode;

(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;

(s) 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/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	