IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6303 of 2022

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M/s Marda Collection Private limited having its Registered office situated at 410, Ashiana Tower, Exhibition Road, Patna, Bihar - 800001 through its authorized representative Madhusudan Binani aged about 60 years, Male, Son of Rameshwar Das Binani.

... ... 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, Patna West Division, Patna.
3. The Joint Commissioner of State Taxes, Gandhi Maidan Circle, Patna.
4. The Deputy Commissioner of State Taxes, Gandhi Maidan Circle, Patna.
5. The Assistant Commissioner of State Taxes, Gandhi Maidan Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anjani Kumar Jha, Advocate
For the Respondent/s	:	Mr. Vikash Kumar (SC-11)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-05-2022

Heard learned counsel for the parties.

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

(i) For issuance of writ in the nature of certiorari to quash the order dated 06.10.2021 passed by the Additional Commissioner of State Taxes, Patna West Division, Patna whereby appeal filed by the Petitioner under Rule 108 of Bihar Goods and Services Tax Rule, 2017 read with Section 107 of Bihar Goods and Services Tax Act, 2017.

(ii) For issuance of writ in the nature of certiorari to quash the Summary of Demand dated 09.10.2021 of Rs. 97,07,819.00/- issued under Rule 113(1) and 115 after Dismissal of Appeal.

(iii) For issuance of writ in the nature of Certiorari for quashing of order of assessment dated 09.02.2021 passed by the assessing officer i.e. Assistant commissioner of State Taxes under section 73(9) of the Bihar Goods and Services Tax Act, 2017 read with Central Goods and Services Tax Act, 2017, whereby total liability of Rs. 97,07,818.41/- has been fixed on the Petitioner including the interest of Rs. 22,40,265.79/- and Penalty of Rs. 6,78,868.43/- which has been imposed on total assessed exceeded INPUT TAX CREDIT of Rs. 67,88,684.19/- for the period of April 2018 to March 2019 due to difference in GSTR-3B and GSTR-2A.

(iv) For issuance of writ in nature of certiorari to quash the order of Joint Commissioner of State Taxes, Gandhi Maidan Circle, Patna dated 24.03.2021 passed under section 73(9) of Bihar Goods and Services Tax Act, 2017read with rule 142(5) of Bihar Goods and Services Tax Act, 2017, whereby Petitioner has been directed to pay total amount of Rs. 97,07,818.41/- including the interest of Rs. 22,40,265.79/- and Penalty of Rs. 6,78,868.43/- has been imposed on total assessed exceeded INPUT TAX CREDIT of Rs. 67,88,684.19/- for the period of April 2018 to March 2019.

(v) For issuance of writ in nature of mandamus to direct the respondents not to recover the Penalty and interest amount in light of the amended Section 50(1) of the Central Goods and Services Tax Act, 2017, which was also clarified through press release 26.08.2020.

(vi) For issuance of direction to the Respondents to prohibit them from recovering the amount of interest and penalty from the credit amount.

(vii) For any other relief/reliefs to petitioner is entitled for.

Petitioner has prayed for quashing of the impugned order dated 06.10.2021 passed by the Additional Commissioner of State Taxes (Appeal), Patna West Division, Patna in Appeal Case No. GST/GM-11/20-21 (Annexure-4); order dated 09.10.2021 passed in Order No.

ZD1010210073400 (Annexure-5); order dated 09.02.2021 passed by the Joint Commissioner of State Tax, Gandhi Maidan, Patna West, Bihar in Reference No. ZD100221007081L (Annexure-1); as also the order dated 24.03.2021 passed by the Joint Commissioner, State Tax, Gandhi Maidan Circle, Patna.

The orders appears to be *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 06.10.2021 passed by the Additional Commissioner of State Taxes (Appeal), Patna West Division, Patna in Appeal Case No. GST/GM-11/20-21 (Annexure-4) and the order dated 09.10.2021 passed in Order No. ZD1010210073400 (Annexure-5);

(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 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. Additional Commissioner, State Taxes (Appeal), Patna West Division, Patna on 6th of June, 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 stands 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	18.05.2022
Transmission Date	