IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6306 of 2022

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M/s Sonali Construction having its Office at Jaganathpur, Nandlapur, Kahalgaon, Bhagalpur, Bihar, 813222 through its Proprietor, Shashi Bhushan (Male), Aged About 35 Years, S/o Upendra Yadav Residing at Ward No. 10, Jagaranathpur, Salempur Saini, P.O.- Nandlalpur, P.S.- Kahalgaon, District- Bhagalpur, Bihar, Pin - 813222.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner cum Principal Secretary, State Taxes Department, Govt. of Bihar, Patna.
2. The Additional Commissioner of State Tax (Appeals), Bhagalpur Division, Bhagalpur, Bihar.
3. The Joint Commissioner of State Tax, Bhagalpur Circle, Bhagalpur, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Akash Chaturvedi, Advocate Mr. Vijay Kumar Singh, 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 : 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 for quashing of order dated 09.10.2021/ 10.09.2021 bearing order APL-02 Reference no. ZD100821014745H) whereby the appeal preferred by the petitioner has been rejected on the grounds of limitation and non submission of certified copy of order against which appeal was preferred in a very mechanical manner being illegal arbitrary.

II. For issuance of writ in the nature of certiorari for quashing of the order dated 03.01.2020 passed by respondent no. 03 whereby Suo Moto order of cancellation of GST registration of petitioner has been passed on account of GST returns not filed for the continues period of 6 months.

III. For issuance of writ in the nature of declaration that the action of cancelation of registration of petitioner by the respondent authorities as per say illegal arbitrary and without jurisdiction for the reason that the petitioner has already filed the returns for the months of January 2022 and has also paid the late fee as the GST portal allowed to file GST returns.

IV. For issuance of writ in the nature of mandamus directing the respondent to restore the registration of the petitioner issued under the GST Law so that he can do his business and file his future returns.

V. To any other relief/s to which the petitioner is found entitled to in facts and circumstances of the present case.

Petitioner has prayed for quashing of the impugned order dated 09.09.2021 passed by the Additional Commissioner of State Tax (Appeals), Bhagalpur Division, Bhagalpur, Bihar (Respondent no.2) in Appeal Case No. (ARN) AD100821014745H (Annexure-4); order in Form GST APL-02 dated 10.09.2021, whereby the appeal filed by the petitioner has been rejected on the ground of delay as also non-submission of the certified copy of the order, as also also the order dated 03.01.2020 passed by the Joint Commissioner of State Tax, Bhagalpur (Respondent No.3) in Reference No. ZA100120008025S (Annexure-2).

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 09.09.2021 passed by the Additional Commissioner of State Tax (Appeals), Bhagalpur Division, Bhagalpur, Bihar (Respondent No.2) in Appeal Case No. (ARN) AD100821014745H (Annexure-4) and the order in Form GST APL-02 dated 10.09.2021;

(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 of State Tax (Appeals), Bhagalpur Divisionh, Bhagalpur, Bihar (Respondent no.2) 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	