IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6965 of 2022

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M/s Vindyavashini Sales O, W-11, H-22, Sikandarpur, Anupam Complex, Bihar- 842001 through Vijay Kumar Modi, Male, aged about 53 years, Son of Gauri Shankar Modi, Residing at Sikandarpur, Anupam Complex, P.S.- Bhagwanpur, District- Muzaffarpur, Bihar- 842001.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-cum-Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Joint Commissioner of State Taxes Gandhi Maidan Circle, Patna.
3. The Deputy Commissioner of State Taxes Gandhi Maidan Circle, Patna.
4. The Assistance Commissioner of State Taxes Gandhi Maidan Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rabindra Prasad Singh, 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 : 20-06-2022

Petitioner has prayed for the following relief(s):

> "1. That this writ petition is directed for the issuance of appropriate writ or direction in the nature of:-
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> (i) Certiorari for setting the order dated 17.12.20219 whereby and where under APL-01 against demand ZA101218000282E dated 17.12.2019 w.r.t., G.S.T. IN /Id 10ADIPM3557FIZU has been dismissed as time barred by the Additional Commissioner, Tax (Appeal), Tirhut Permandal, Muzaffarpur.

(ii) Certiorari for setting aside of GSTR3B bearing Reg. No. 10ADIPM3557E12U dated 26.11.2018 without issuing any show-cause notice the petition.

(iii) Any other appropriate writ or direction may be issued which may be applicable in the teeth of the facts."

It is brought to our notice that vide impugned order dated 17.12.2019 passed by the Additional Commissioner of State Tax (Appeals) Tirhut Division, Muzaffarpur under Form GST APL-01 in GSTIN No. 10ADIPM3557F1ZU, the appeal of the petitioner against the order dated 26.11.2018, issued vide Reg. No. 10ADIPM3557F12U for Tax Period 2017-18, 2018-19 by the Assistant Commissioner of State Tax, Tirhut Division, Muzaffarpur has been rejected merely on the grounds of being barred by limitation. Both the orders were ex parte in nature.

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 17.12.2019 passed by the Additional Commissioner of State Tax (Appeals) Tirhut Division, Muzaffarpur under Form GST APL-01 in GSTIN No. 10ADIPM3557F1ZU;

(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 concerned on 28th July, 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	30.06.2022
Transmission Date	