IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8763 of 2022

==

Pawan Kumar Agarwal (HUF) Caltex Chowk, Purab Palli Road, Kishanganj, District- Kishanganj, through its KARTA, Pawan Kumar Agarwal.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner State Tax cum Secretary, Bihar, Department of Commercial Tax, New Secretariat, Patna.
2. The Additional Commissioner State Tax (Appeal) Purnea Division, Purnea.
3. The Deputy Commissioner of State Tax Kishanganj, Purnea, Bihar.
4. The Executive Engineer Rural Works Department, Works Division, Kishanganj-1, District- Kishanganj.

... ... Respondent/s

==

Appearance :
For the Petitioner/s : Mr.Ramesh Kumar Agrawal, Advocate
For the Respondent/s : Mr.Vivek Prasad, GP 7

==

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

Date : 29-06-2022

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

> "(i) For issuance of an appropriate writ(s), order(s) or direction(s) in the nature of writ of certiorari quashing the order and demand notice both dated 27.02.2020 (Collectively) passed/issued by the respondent Deputy Commissioner of State Tax, Kishanganj, Purnea under Section 73 of the Bihar Goods and Service Tax Act, 2017 (hereinafter referred to as 'the BGST Act, 2017 only) rad with Central Goods and Service Tax Act, 2017 (hereinafter referred to as 'the CGST Act, 2017 only') for the period from April 2019 to September 2019 by which Rs. 6,01,222/- has been assessed as tax, Rs. 36,074/- has been assessed as interest and Rs. 60,122/- has been imposed as penalty. Thus, total demand of Rs. 6,97,418/- has been created.
>
> (ii) For issuance of an appropriate writ, order or direction for quashing the appellate order dated

04.10.2021 (Annexure-5) passed by the respondent Appellate Authority that is Additional Commissioner of State Tax (Appeal), Purnea Division, Purnea by which time petition filed by the petitioner has been rejected without considering properly letter dated 18.09.2021 (Annexure-3) issued by the Executive Engineer, Rural Works Department, Works Division, Kishanganj-I.

(iii) For issuance of appropriate writ, order or direction restraining the respondents from initiating any recovery proceedings against the petitioner as demanded by the respondents by the aforesaid demand notice.

(iv) For issuance of appropriate writ, order or direction restraining the respondents from taking or initiating any coercive action against the petitioner and or its agents/officials etc, and

(v) To grant such other consequential relief(s) to the petitioner, which this Hon'ble Court may find the petitioner to be entitled to in equity and/or in law in the facts and circumstances of the case."

It is brought to our notice that vide impugned order dated 04.10.2021 passed by the Additional Commissioner of State Tax (Appeal), Purnea in Appeal No. (ARN) AD1007210006871) , the appeal of the petitioner against the order dated 27.02.2020 passed by Deputy Commissioner of State Tax, Kishanganj, Purnea, Respondent No. 3 has been rejected merely on the ground that no statutory evidence has been filed.

In the attending facts and circumstances, for we find that even though petitioner did not co-operate with an endeavour of, perhaps, procrastinating the proceedings, but the officer did not account for the issues raised by the petitioner in the grounds of appeal.

We notice that what weighed with the Appellate Authority was the petitioner's attempt of seeking repeated adjournments, and as the Statute mandates not more than three adjournments can be granted, which prompted the officer to pass the impugned order.

At this stage, Shri Vikash Kumar, learned S.C.-11, states that petitioner be directed to appear before the Appellate Authority with condition that he shall not take any further adjournment.

Shri Ramesh Kumar Agrawal, learned counsel for the petitioner states that on the date to be fixed, petitioner shall not only appear but place the entire material before the Appellate Authority for consideration or on any other date fixed by the authority, the matter would be argued.

Learned counsel for the petitioner states that he shall deposit 10% of the demand raised as a consequence of the impugned order.

Under these circumstances, we dispose of the present petition in the following mutually agreeable terms:-

(a) We quash and set aside the impugned order dated 04.10.2021 passed by the Additional Commissioner of State Tax (Appeal), Purnea in Appeal No. (ARN)

AD1007210006871);

(b) The appeal is restored to its original file and number;

(c) We accept the statement of the petitioner that he shall deposit 10% of the demand raised as a consequence of the impugned order;

(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 11.07.2022 at 10:30 A.M., if possible through digital mode;

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

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

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

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

(k) 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;

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

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

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

(o) 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;

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

(q) 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)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	01.07.2022
Transmission Date	