# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Civil Writ Jurisdiction Case No.9320 of 2022**

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Aadhar Stumbh Township Private Limited Flat- 302, Jaya Apartment, B Bhattacharya Road, Chowk, Patna, Bihar- 800023 through its Authorised representative Ankit Garg, aged about 37 years (Male), Son of Sh. Anil Garg.

.. ... Petitioner/s

Versus

1. The State of Bihar Through the Commissioner, State Taxes, Bihar, Patna.
2. Additional Commissioner of State Tax (Appeal)/Appellate Authority Patna West Division, Patna, Bihar.
3. Deputy Commissioner of State Tax Patna South, Patna West, Bihar.
4. The NTPC, through DGM (PE and M) ER-1 HQ, 2nd Floor, LNJP Bhawan,l Fraser Road Area, Dak Bunglow Chowk, Patna, Pin Code- 800001.

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr.Kumar Shanu, 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 : 03-08-2022**

Heard learned counsel for the parties.

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

> I. For the issuance of a direction, order or writ, including writ in the nature of certiorari for quashing the order dated 05.03.2022 of Additional Commissioner of States Tax

(Appeal)/Appellate Authority, Patna West Division, Patna, Bihar as it is not in accordance with and against the very spirit of the Bihar Goods and Services Act, 2017 (Hereinafter referred as “The Act”)

II. For the issuance of appropriate writ/direction/order to stay the impugned order dated 05.03.2022 until the pendency of the case.

III. For providing any other relief that your good self may deem fit in the interest of justice, equity and good conscience.”

Having perused the impugned order dated 05.03.2022 passed by Respondent No. 2, namely the Additional Commissioner of State Tax (Appeal)/Appellate Authority, Patna West Division, Patna, Bihar in Appeal Case Nos. G.S.T./P.S.-30/2020-21; G.S.T./P.S.-31/2020-21; G.S.T./P.S.-32/2020-21; G.S.T./P.S.-33/2020-21 and G.S.T./P.S.-34/2020-21 (Annexure-A1) with respect to the transactions pertaining to financial years 2018-19 and 2019-2020, we find that the proceeding under Section 74 were initiated by the Revenue. Notices to show cause were issued and in response thereto petitioner inter alia raised the issue of non-adjustment of tax paid in advance and on deduction of TDS on the gross value of the invoices raised rather than the taxable value which allegedly is in contravention of the provisions of Section 51 of the Act.

Not accepting the submissions made by the petitioner, the Assessing Officer passed several orders with respect to different periods for all the transactions relating to the aforesaid financial years.

Aggrieved thereof, petitioner preferred five separate appeals before the Additional Commissioner, State Tax (Appeal), an authority constituted under the provisions of the Act.

Vide impugned order dated 5th of March, 2022, the said authority has disposed of all the appeals by passing a common order.

Having perused the same, we are of the considered view that the order needs to be quashed and set aside with the matter remanding back to the authority for the following reasons:-

(a) The order, even though running into five pages, does not assign any reasons while arriving at the conclusion in upholding the reasoning adopted by the Assessing Officer or rejecting the petitioner’s contentions.

(b) In fact appellant’s contentions have neither been referred to nor adverted to.

(c) There is no narration of tax at all leading to the formation of opinion by the appellate authority. The order only reproduces the provisions of the statute and nothing more. How the provisions of the statute are relevant and applicable to the attending facts cannot be inferred from the order.

(d) The Order thus state that the appellant was afforded opportunity to place materials during the course of the hearing which the appellant failed to do so.

No order to such effect is placed on record.

Be that as it may, we notice that the proceedings were conducted during the time of Pandemic Covid-19, and as such, the appellate authority ought to have been more indulgent in granting reasonable opportunity to the petitioner to place material on record, and only in the event of failure thereof, pass an order assigning reasons closing the petitioner’s right to do so which was not so done. In fact, no order in writing was passed forming an opinion that petitioner is trying to delay the proceedings.

As such, passing of the order entails civil consequences.

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 05.03.2022 passed by Respondent No. 2, namely the Additional Commissioner of State Tax (Appeal)/Appellate Authority, Patna West Division, Patna, Bihar in Appeal Case Nos. G.S.T./P.S.-30/2020-21; G.S.T./P.S.-31/2020-21; G.S.T./P.S.-32/2020-21; G.S.T./P.S.-33/2020-21 and G.S.T./P.S.-34/2020-21 (Annexure-A1);

(b) The appeals are restored to their 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 shall appear before the Appellate Authority on 29th of August, 2022 at 10:30 A.M. on which a date would be fixed for placing additional materials;

(g) The Appellate Authority shall condone the delay in filing the appeals and decide the appeals on merits after complying with the principles of natural justice;

(h) Opportunity shall be granted to the petitioner to place on record all essential documents and materials, if so required and desired;

(i) Parties shall be heard at length;

(j) During pendency of the appeals, 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 all the appeals separately, on merits, expeditiously, preferably within a period of one month 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;

Needless to add, material placed on record by the party shall be referred to and adverted to and dealt with by the Officer.

The instant petition sands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, also stands disposed of.

**(Sanjay Karol, CJ)**

**( S. Kumar, J)**

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| **AFR/NAFR** | |
| **CAV DATE** | |
| **Uploading Date** | |
| **Transmission Date** | |