IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13671 of 2022

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M/s Mukesh Gop a Sole Proprietorship Firm, having its registered office at House No. 74, Pathar Ki Masjid, Mahendru, Patna City, Patna, Bihar- 800006 through its authorized signatory Mr. Mukesh Gop.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue, having its office at Room No. 46, North Block, P.O. and P.S. North Block, New Delhi- 110001.
2. The Central Board of Indirect Taxes and Customs, through its Chairman Ministry of Finance, Department of Revenue, having its office at North Block, P.O. and P.S. North Block New Delhi - 110001.
3. The Commissioner of Central Goods and Services Tax and Central Excise, Patna having its office at New Secretariat Patna Bihar.
4. Joint Commissioner of State Tax, Patna City West, Patna, Bihar.
5. Assistant Commissioner of State Tax, Patna City West, Patna, Bihar.
6. Additional Commissioner of State Tax (Appeal), Patna East Division, Patna, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anunrag Saurav, Advocate Mr. Anurag Saurav, Advocate Mr. Abhinav Alok, Advocate Mr. Priyajeet Pandey, Advocate
For the State	:	Mr. Vivek Prasad, GP 7
For the UOI	:	Mr. Anshuman Singh, Sr. SC, CGST
For the Respondent/s	:	Mr.Additional Solicitor General

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

Date : 12-10-2022

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

(i) For issuance of appropriate writ/order/direction for setting aside ex-parte order bearing Ref no. ZA100721379510X dated 23.07.2021 passed by Joint

Commissioner of State Tax, Patna City West, Patna whereby and where under the registration of the petitioner has been cancelled by an ex-parte order dated 23.07.2021 without providing an opportunity of hearing to the petitioner and without assigning any reason and from the said order it appears that there were no pending tax liability against the petitioner.

(ii) For Issuance of an appropriate writ/ order/ direction for setting aside order 22.07.2022 issued by memo no. 228 dated 22.07.2022 passed by Additional Commissioner Appeal, Patna East Division, Patna in Appeal Case No. AD1007220021811 and the appellate authority dismissed the appeal of the petitioner on the ground of limitation.

(iii) For Issuance of an appropriate Writ(s), order(S), and/or direction(s), as Your Lordships may deem fit and proper in the facts and circumstances of this case in the interest of justice.

The instant petition has been filed for a direction to quash the order dated 22.07.2022 issued vide Memo No. 228 by respondent No.6, namely, the Additional Commissioner, State Tax (Appeals), Patna East Division, Patna whereby the appeal bearing Appeal Case No. G ST/PCW/07/2022-23 (ARN No. AD1007220021811) has been rejected merely on the grounds of being barred by limitation and also ex-parte order dated 23.07.2021 passed by respondent No.4, namely, the Joint Commissioner of State Tax, Patna City West, Patna, Bihar whereby the registration granted to the petitioner's company under the GST Act, 2017 has been cancelled without giving opportunity of hearing. 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 22.07.2022 issued vide Memo No. 228 by respondent No.6, namely, the Additional Commissioner, State Tax (Appeals), Patna East Division, Patna in Appeal Case No.GST/PCW/07/2022-23 (ARN No. AD1007220021811);

(b) 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;

(c) 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;

(d) 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;

(e) Petitioner undertakes to appear before the Appellate Authority on 02.11.2022 at 10:30 A.M.;

(f) 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;

(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;

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)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	15.10.2022
Transmission Date	