IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14271 of 2022

M/s Humancare Pharma Private Limited, Lekha Nagar, Cantt Road, Danapur, Khagaul, Patna, Bihar through one of its Directors Rameshwar Abhishek, Aged about 37 years, Gender Male, son of Sri Mahesh Prasad Singh, Resident of Lekha Nagar, Asopur, P.S. Khagaul, District- Patna- 801105.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Tax (Appeals), Patna West Division, Patna.
3. The Joint Commissioner, State Tax, Patna South Circle, Patna.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Alok Kumar, Advocate
		Mr. Arjun Kumar, Advocate
		Mr. Awalesh Kumar, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC-11

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

Date : 12-10-2022

Heard learned counsel for the parties.

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

(i) For consequential writ or order for quashing of order dated 05.09.2022 issued vide Memo No. 1648 dated 05.09.2022 passed by the Additional Commissioner, State Tax (Appeals), Patna West Division, Patna whereby the application filed for Revocation of order of cancellation bearing Appeal Case No. GST/PS-61/22-23 has been rejected;

(ii) For consequential writ or order for quashing of ex-parte order dated 01.12.2018 passed by the Joint Commissioner of State Tax, Patna South Circle, Patna whereby the Registration granted under the GST Act, 2017 of the Petitioner has been cancelled without giving proper opportunity of filing reply and without giving opportunity of hearing;

(iii) For a direction to the Respondent No. 3 to restore the registration granted under GST Act, 2017 of the petitioner firm whereby the registration of the petitioner firm was cancelled by an ex-parte order;

(iv) For a direction to the Respondents for de-freezing/ attaching of the Bank Account of the petitioner firm attached by the Respondents;

(v) For further issuance of a direction restraining the Respondent No. 3 from taking any coercive action for recovery of the amount in demand during pendency of the present writ petition;

(vi) For grant of any relief or reliefs to which the petitioner is entitled in the facts and circumstances of the case.

The instant petition has been filed for a direction to quash the order dated 05.09.2022 issued vide Memo No. 1648 dated 05.09.2022 by respondent No.2, namely, the Additional Commissioner, State Tax (Appeals), Patna West Division, Patna whereby the application filed for revocation of order of cancellation bearing Appeal Case No. GST/PS-61/22-23 has been rejected merely on the grounds of being barred by limitation and also ex-parte order dated 01.12.2018 passed by respondent No.3, namely, the Joint Commissioner of State Tax, Patna South Circle, Patna 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 and also death of the Director of the petitioner’s company.

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 05.09.2022 issued vide Memo No. 1648 dated 05.09.2022 by respondent No.2, namely, the Additional Commissioner, State Tax (Appeals), Patna West Division, Patna in Appeal Case No. GST/PS-61/22-23;

(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 i.e. the Additional Commissioner of State Tax (Appeals), Patna West Division, Patna 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	