IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14917 of 2022

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M/s Kumar Distributors Private Limited 1st Floor Shilawarth, Shilawarth, North Sri Krishnapuri, Police Station- S.K. Puri, District- Patna, Bihar-800013 through its Director Vikash Kumar Singh aged about 46 years (Male) son of Umeshwar Prasad Singh, Resident of Shilawarth, North S.K. Puri, Boring Road, Patliputra, Patna, Bihar- 800013.

... ... Petitioner/s

Versus

1. The State of Bihar Through the Secretary, Ministry of Finance, Govt. of Bihar, Patna.
2. The Principal Chief Commissioner of Central GST Central Revenue Building, Birchand Patel Path, Patna.
3. The Commissioner, Department of State Taxes, Govt. of Bihar, Patna.
4. The Additional Commissioner (Appeal), Patna, Western Division, Patna.
5. The Assistant Commissioner of State Taxes, Patna Central, Anchal, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Radha Mohan Pandey, Advocate
For the Union of India	:	Mr. Anshuman Singh, Sr. SC, CGST & CX
For the State	:	Mr. Vivek Prasad, GP-7

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 02-11-2022

Petitioner has prayed for following relief (s):-

> "1. That this is an application with humble prayer for issuance of an appropriate writ, order or dictation for setting aside the order contained in Memo No.54 dated 20.04.2022 (Annexure-P/3) passed by Additional Commissioner(Appeal) of State Taxes, Patna Western Division (Patna) passed in Appeal Case No.-GST/PTC 178/2021-22 through which the said appeal has been dismissed only on the

> ground of limitation and the Additional Commissioner(Appeal) of State Taxes, Patna Western Division (Patna) recused himself to adjudicate the same as to whether petitioner is entitled to avail input tax credit Under Section 140 of the Bihar Goods and Services Tax Act, 2017 read with Rule 117 of the Bihar Goods and Services Tax Rules, 2017 or not, but has dismissed the said appeal Under Section 107 of the Bihar GST Act, 2017 read with Rule 108(3) of the Bihar GST Rule, 2017 erroneously and illegally whereas petitioner is entitled to avail inpute Tax Credit amounting to Rs.16,98,239.94/- but instead of allowing Input Tax Credit Assistant Commissioner of State Tax Patna Central, Patna West, Bihar erroneously has raised a demand notice dated 10.8.2019 in Form GST DRC-07 (Annexure-P/4) with interest and penalty amounting to Rs.24,67,543.00/- erroneously and illegally."

Appellate order needs to be quashed and set aside for the appeal stands rejected solely on the ground of limitation. The cause of action had arisen during the time of Pandemic Covid-19 and the authorities were fully aware of the directions issued by Hon'ble The Apex Court as also this Court excluding the period of Pandemic for the purposes of computing limitation.

As such, on this short ground alone, the impugned order contained in Memo. No.54 dated 20.04.2022 (Annexure-P/3, page-21) is quashed and set aside with the direction that the appeal shall be heard and decided on merits.

Petition is disposed of in the following terms:

(a) Petitioner shall approach the authority concerned i.e. Respondent No.4, namely The Additional Commissioner (Appeal), Patna, Western Division, Patna within a period of four weeks from today.

(b) The authority concerned shall consider the appeal and dispose it of expeditiously by a reasoned and speaking order preferably within a period of two months from the date of its filing along with a copy of this order;

(c) The order assigning reasons shall be communicated to the petitioner;

(d) Needless to add, while considering such appeal/representation, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties;

(e) Also, opportunity to place on record all relevant materials/documents shall be granted to the parties;

(f) Equally, liberty is reserved to the petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law;

(g) We are hopeful that as and when petitioner takes recourse to such remedies, as are otherwise available in law, before the appropriate forum, the same shall be dealt with, in accordance with law and with reasonable dispatch;

(h) Liberty reserved to the petitioner to approach the appropriate forum/Court, should the need so arise subsequently on the same and subsequent cause of action;

(i) We have not expressed any opinion on merits. All issues are left open;

The petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	