IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15606 of 2022

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M/s Raj Laxmi Sales Agency having its registered office at 39, Raghuvanch Market, Exhibition Road, Patna, Bihar- 800001 through its Proprietor namely Raj Kumari Singh @ alias Raj Kumari Devi, Female aged about 46 year, Wife of Radheshyam Singh, Resident of New Bypass, New Jaganpura, Sampatchak, Patna- 800027.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of Sales Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeals), East Division, Patna.
3. The Assistant Commissioner of State Tax, North Circle, Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Pawan Kumar Singh, Advocate
For the Respondent/s : Mr. Vikash Kumar, SC-11

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

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(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

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Date : 02-12-2022

Heard learned counsel for the parties.

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

a) For issuance of writ in the nature of certiorari for quashing of the ex parte order dated 17.08.2022 issued vide memo number 254 passed and issued by the respondent number 2 (hereinafter referred to as the appellate authority for short) whereby the appeal preferred by the petitioner under section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the Central Act 2017 for short) and Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as the Bihar act 2017 for short) has been rejected;

b) For issuance of writ or order or direction in the nature of certiorari for quashing of the ex parte order dated 17.08.2022 passed by the respondent number 2 (hereinafter referred to as the appellate authority short) to hear the appeal on merits;

c) For issuance of writ or order or direction in the nature of certiorari for quashing of the ex parte order dated 19.02.2022 passed by the respondent number 3 (hereinafter referred to as the assessing authority short) under section 73 of the Central Act 2017 and Bihar act 2017 and also for quashing of the summary of order issued in form GST DRC – 07 dated 19.02.2022;

d) For further restraining the respondents from taking any coercive action against the petitioner for recovery of the amount of tax, interest and penalty in terms of the impugned order passed by the respondent number 3 of the present writ application;

e) For further holding and a declaration that mere absence of auto populated GSTR – 2A resulting in mismatch with the return filed by the petitioner in form GSTR – 3B cannot deprive the petitioner from the benefit of input tax credit;

f) For further holding and a declaration that the provision of section 16 (2) and rule 36 of the central goods and services tax rules, 2017 nowhere restricts the right to avail input tax credit with respect to a particular month in the same month itself rather the provision of section 16 (4) of the central act 2017 and Bihar act 2017 permits the availability and utilisation of input tax credit for the past financial year till the due date of filing of returns for the month of September of the following financial year;

g) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case.

It is brought to our notice that vide impugned order dated 17.08.2022, passed by Respondent No. 2, namely, the Additional Commissioner of State Taxes (Appeals), East Division, Patna in Appeal Case No. GST/PTN-12/2022-23 (Annexure-3), the appeal of the petitioner against the order dated 19.02.2022 passed by Respondent No. 3, namely, the Assistant Commissioner of State Tax, North Circle, Patna (Annexure-1) has been rejected merely on the grounds of being barred by limitation. The order is ex parte in nature.

In our considered view, the delay stands sufficiently explained on account of COVID-19 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 17.08.2022, passed by Respondent No. 2, namely, the Additional Commissioner of State Taxes (Appeals), East Division, Patna in Appeal Case No. GST/PTN-12/2022-23 (Annexure-3);

(b) The appeal is restored to its 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 the present petition. This shall be done immediately.

(f) Petitioner undertakes to appear before the Appellate Authority on 19th of December, 2022 at 10:30 A.M.;

(g) 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;

(h) Opportunity of hearing shall be afforded to the parties. Also, opportunity to place on record all essential documents and materials, if so required and desired, shall be granted to the petitioner;

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

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

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

(l) 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;

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

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

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

(p) 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;

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

(r) If possible, proceedings 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)

(Partha Sarthy, J)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	06.12.2022
Transmission Date	