IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16107 of 2022

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M/s Span Pumps Private Limited a company registered under Companies Act, 1956/2013, having its office at 1, Bindi Market, Medical College Road, PS and PO and District-Gaya through its authorized signatory Ram Pukar Sharma (Male), Aged about 65 years, S/o Ram Nagina Sharma, Residing at Vachaspati Nagar, Mahendru, PO-Mahendru, PS-Sultanganj, District-Patna, Bihar.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi-110001.
2. The Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi-110001.
3. The State of Bihar through the Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
4. The Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
5. The Additional Commissioner State Tax (Appeals), Central Division, Patna.
6. The Assistant Commissioner of State Tax, Patna Special Central, Bihar.
7. The Executive Engineer, Public Health Engineering Division, Jehanabad.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhishek Kumar, Advocate
		Mr. Brisketu Sharan Pandey, Advocate
		Mr. Madan Kumar, Advocate
For the Respondent/s	:	Dr. K.N. Singh, ASG
		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):-

(i) For issuing a writ of certiorari or any other appropriate writ quashing/ setting aside the assessment order dated 07.03.2020 and the consequent order in FORM GST DRC 07 dated 07.03.2020 (Annexure- P/1 Series) passed by Respondent No. 6 for the F.Y 2018-19 whereby and whereunder the assessment order has been passed for the aforesaid period imposing total liability of Rs. 5,78,375.92(Tax – Rs. 2,66,103.48, Interest- Rs. 46,168.96 and penalty of Rs. 2,66,103/-);

(ii) For issuing a writ of certiorari or any other appropriate writ quashing/ setting aside the FORM GST APL – 02 dated 02.02.2021 (Annexure P/2) issued to the Petitioner whereby and whereunder the appeal filed by the Petitioner was reject on the ground of delay in filing of Appeal during the period of COVID 19 pandemic;

(iii) For issuing a writ of mandamus or any other appropriate writ directing the Respondents not take any coercive action including recovery from bank account and third parties until pendency of the present writ application and if the recovery has already been done then the same may be refunded in a time bound manner;

(iv) For issuing writ of mandamus and thereby directing the Respondents to refund a sum of Rs.26,612/- for which was deposited by the petitioner as ten percent of disputed tax amount as needed to be paid as pre-deposit (Section 107(6)(b) of Central Goods and Service Tax Act, 2017) before filing an appeal;

(v) For passing any such other order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Petitioner has prayed for quashing of the order dated 07.03.2020, passed by Respondent No. 6, namely, the Assistant Commissioner of State Tax, Patna Special: Central:Bihar (Annexure-1) and the order in Form GST APL-02 dated 02.02.2021 in Reference No. ZD100221001176G, passed by Respondent No. 5, namely, the Additional Commissioner State Tax (Appeals), Central Division, Patna (Annexure-P/2), whereby the appeal preferred by the petitioner has been dismissed on the ground of 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 in Form GST APL-02 dated 02.02.2021 in Reference No. ZD100221001176G, passed by Respondent No. 5, namely, the Additional Commissioner State Tax (Appeals), Central Division, Patna (Annexure-P/2):

(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 stands 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	