IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16753 of 2022

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Shri Raj Communication a proprietary concern having its office at 01, Jyoti Chowk, Koirapurwa, Buxar, Bihar- 802101 through its proprietor Abhishek Kumar (Male, aged about 30 years) son of Late Parsuram Prasad Gupta, Koirapurawa, Baksara near Dainik Jagran, Buxar, Bihar- 802101.

... ... Petitioner/s

Versus

1. State of Bihar through Commissioner of State Tax, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Addl. Commissioner of State Tax, (Appeal), Patna West Division, Patna.
3. Asst. Commissioner of State Tax, Bexar, Patna West Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.D.V.Pathy, Advocate
For the Respondent/s	:	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)

(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.)

Date : 09-12-2022

Heard learned counsel for the parties.

The petitioner has prayed for the following relief/s :-

i) the ex parte order dated 02.09.2022 (as contained in Annexure -7) passed by the respondent no.2 dismissing the Appeal Case No. GST/BX - 10/2020 - 21 for the Financial Year 2019 - 20 without consideration of the grounds of appeal and also without grant of adequate opportunity of being heard be quashed.

ii) the order dated 03.02.2021 (as contained in Annexure - 4 series) passed by the respondent no. 3 for the Financial Year 2019 - 20 under Section 73 of the Bihar Goods and Services Tax Act,2017 be quashed

iii) the summary of order dated 03.02.2021 (as contained in Annexure - 4 series) in Form GST DRC - 07 issued by the respondent no.3 be quashed.

iv) for granting any other relief (s) to which the petitioner is otherwise found entitled to.

It is brought to our notice that vide impugned order dated 02.09.2022 passed by the Respondent No. 2, namely the Additional Commissioner of State Tax (Appeal), West Division, Patna, in Appeal Case No.GST/BX-10/2020-21, the appeal of the petitioner against the order dated 03.02.2021 passed by Respondent No. 3, namely the Assistant Commissioner of State Tax, Patna, West

Circle for the period 2019-20 and summary of order dated 03.02.2021 issued in form GST DRC – 07 has been rejected.

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 02.09.2022 passed by the Respondent No. 2, namely the Additional Commissioner of State Tax (Appeal), West Division, Patna, in Appeal Case No.GST/BX-10/2020-21;

(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 Assessing Officer. 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 23.12.2022 at 10:30 A.M., if possible through digital mode;

(f) The Appellate Authority shall condone the delay in filing the appeal, if any, 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;

(q) 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)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	13.12.2022
Transmission Date	