IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8310 of 2023

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M/s Nippon Paint (India) Pvt. Ltd. a Private Limited Company Having its Principal Place of Business at Plot No. 341, Adarsh Colony, Behind MRP Petrol Pump, West Transport Nagar, Patna through its Authorized Signatory, namely, Amit Kumar Jain, aged about 44 Years, Male, Son of Shri Ashok Kumar Jain, Resident of H-18, Plot No. 8/19, Mahek Arcade, Rajendra Nagar, Opposite A K Children Academy School, Sector-3, P.S. Sahibabad, Distt.-Gajiabad (Uttar Pradesh).

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. The State of Bihar through the Principal Secretary Cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
3. The Principal Secretary-Cum-Commissioner, State Taxes, Government of Bihar, Patna.
4. The Additional Commissioner of State Taxes (Appeal), Central Division, Patna.
5. The Deputy Commissioner of State Taxes, Special Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mohit Agarwal, Advocate
		Mr. Lokesh Kumar, Advocate
For the State	:	Mr. Raghwanand, G.A.-11
		Mr. Pratik Kumar, A.C. to G.A.-11

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

Date : 20-06-2023

The petitioner is aggrieved with the Annexure-5, an order passed in an appeal, which rejected the appeal on the grounds of delay.

2. We have heard the learned counsel for the appellant

and also the learned counsel for the State. The learned counsel for the State submits that there are no grounds forthcoming from the appeal memorandum and the affidavit accompanying the delay condonation petition and that the requirement of filing a certified copy is only after one week from the date of filing of the appeal. There was no appeal filed within the time stipulated. Hence, the appeal had to be dismissed. There is no ground for invoking the extraordinary jurisdiction under Article 226 of the Constitution.

3. Learned counsel for the petitioner, however, pointed out that even if the date on which the order was asserted to have been uploaded in the common portal is taken, the appeal is filed within 120 days i.e., within the period in which the condonation of delay is permitted. It is also pointed out that in Annexure-5 it is stated that the appellate order was uploaded on 13.06.2019 and the appeal was filed on 11.10.2019 on the 120th day from the date of communication of the order. It is pointed out that according to the petitioner there was no uploading of the order in the common portal and it had been done only on 12.09.2019 upon which, within one month an appeal was filed before the Appellate Authority. Annexure-2 is the assessment order which was dated 12.06.2019.

4. We see from Annexure-5, the appellate order, that the Appellate Authority concedes that the same was uploaded in the common portal on 13.06.2019. An appeal was filed as per Annexure-3 on 11.10.2019. Annexure-4, affidavit and delay condonation petition also accompanied the appeal.

5. In the delay condonation petition, as submitted by learned counsel for the petitioner, it has been asserted that there was no uploading of the order in the common portal on 12.06.2019 and only the demand notice was uploaded. The order itself was uploaded on 12.09.2019 and the appeal is filed on 11.10.2019.

6. We need not necessarily look at the date on which the order was uploaded as submitted by the petitioner. Even if we take the order to have been uploaded on 13.06.2019, the appeal was filed on 120th day within the time in which the Appellate Authority had the power to condone the delay. There are sufficient grounds stated in the affidavit accompanying the condonation application also. In such circumstances, we are satisfied that it was not proper for the Appellate Authority to have dismissed the appeal on the ground of delay.

7. We set aside the order at Annexure-5 only for the reason that the appeal had been dismissed on grounds of delay.

We restore the appeal to the files of the Appellate Authority before whom the petitioner shall be present on 07.07.2023. The appeal shall be heard and disposed of on merits in accordance with law within a period of one month from the date of hearing.

8. Writ petition stands allowed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Prakash/-
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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A