

(2021) 03 PAT CK 0259

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 6456 Of 2021

M/S Prakash Construction

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision: March 25, 2021

Hon'ble Judges: Sanjay Karol, CJ; S. Kumar, J

Bench: Division Bench

Advocate: P.K. Shahi, Saket Tiwary, Vivek Prasad, Girijish Kumar

Final Decision: Disposed Of

Judgement

Heard learned counsel for the parties.

Petitioner has prayed for following relief(s):-

“a) For issuance of a writ in the nature of certiorary to set aside the order dated 02.02.2021 passed in Appeal bearing reference number

ZD100221001287B passed by the respondent no. 3 by which the appeal preferred by the petitioner has been mechanically rejected on the ground of

delay in submission of the appeal.

(b) for issuance of a writ in the nature of certiorary to set aside the order dated 08.03.2020 bearing Reference Number ZA100320012407I passed by

the Respondent No. 2 against the petitioner for the tax period of the month of October, 2018 inter alia declaring the same as illegal and improper.

(c) for issuance of a writ in the nature of certiorary to set aside the orders dated 08.03.2020 passed in consolidation for the financial year 2018-19 and

2019-20 respectively by the Respondent No. 2 inter alia declaring the same as illegal and improper.

- (d) An issuance of a writ in the nature of certiorary to set aside the order of recovery dated 11.01.2021 passed by the Respondent No. 4 directing the respondent Nos. 5 to 8 to deduct Rs. 9,43,28,306/- (Rupees nine crore forty three lacs twenty eight thousand three hundred six only) from the payments to be made to the petitioner.
- (e) Directions that till the pendency of the writ application the operation of the impugned orders of may be stayed.
- (f) Directions to the respondents authorities (Respondent Nos. 1-4) to consider the reply to the show cause notice filed by the petitioner and pass reasoned order on it before making the impugned recovery.
- (g) Directions to the respondent authorities to hear and dispose the appeal on merits filed by the petitioner in making any recovery as the petitioner did not get any chance of hearing/representation before passing of the impugned order of recovery.
- (h) A direction to remand the matter to the original adjudicating authority for ascertainment of payment as submitted above.
- (I) Any other relief or reliefs that the petitioner is entitled to in the facts and circumstances of the case.â€

It is not in dispute that the appeal was preferred on 28.01.2021 and rejected on 02.02.2021 for the reason â€œDelay in submission of appeal.â€ To say the least the order is cryptic in nature, if not containing sufficient, self explanatory reasons. The appellate authority ought to have, at least indicated application of its mind, by referring to the provisions prescribing the period of limitation; as applicable to the given facts; and then determined the period of delay.

Equally, even, in view of the directions issued by Honâ€™ble the Apex Court and also three Judges Bench of this Court, dealing with the issue of delay during the time of current Pandemic Covid-19, the issue of delay ought not to have been raised, more so, when the petitioner had deposited the entire amount so as to meet the requirement of pre-deposit condition.

Also, prior to the passing of the order, we find that no opportunity of hearing was afforded to the petitioner. We find the principles of natural justice to have been violated inasmuch as no intimation of hearing of the appeal was ever given nor was the petitioner notified or opportunity afforded to explain

reasons for delay.

At this stage, Mr. P.K. Shahi, learned Sr. counsel invites our attention to certain facts which we do not intend to place on record, save and except,

that in view of the current orders passed by this Court, the issue of delay ought to have been dealt with, rather liberally, and delay condoned which we

hereby do so.

As such, for all the aforesaid reasons, we quash and set aside the impugned order dated 02.02.2021 passed by the Additional Commissioner of State

Tax, Patna, Annexure-1, Page 29 with direction to the appellate authority to consider and decide the matter on its own merit. Appeal is restored to its

original number.

Petitioner through learned counsel undertakes to fully corporate and not take unnecessary adjournment. Since the matter pertains to assessment year

2018-19, we direct the appellate authority to decide the appeal on its own merit expeditiously and not later than three months from the date we fix for

appearance.

Parties are directed to appear before the appellate authority on 26.04.2021 at 10:30 A.M.

Needless to add, till the decision of the appeal, no coercive action shall be taken against the petitioner.

The appeal stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, also stands disposed of.