
(2022) 01 PAT CK 0052

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 4 Of 2022

Sujeet Kumar

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: Jan. 17, 2022

Acts Referred:

- Bihar Goods And Service Tax Act, 2017 - Section 30

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

Bench: Division Bench

Advocate: D.V.Pathy, Vivek Prasad

Final Decision: Disposed Of

Judgement

Heard learned counsel for the parties.

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

i) the order dated 15.07.2021 (as contained in Annexure -5) passed by the respondent no. 2 dismissing the appeal in limine only on the solitary ground

of delay in filing of the appeal be quashed.

ii) the order dated 08.08.2019 (as contained in Annexure -2) passed by the respondent no. 3 cancelling registration under Section 29 of the Bihar

Goods and Services Tax Act, 2017 (hereinafter called the Act) be quashed. iii) the respondent no. 3 be directed to restore registration under Section

22 of the Act to enable filing of return and payment of tax in accordance therewith.

iv) for granting any other relief (s) to which the petitioner is

otherwise found entitled to.

In relation to the assessment proceedings pertaining to the year 2018-2019, petitioner could not file the return, which prompted the Assessing Officer

namely Respondent No. 3 Joint Commissioner of State Tax, Kishanganj, Purnea, Bihar to cancel the Registration vide impugned order dated 8.8.2019

in Reference No. ZA100819012545P (Annexure-3). The Appellate Authority i.e. Additional Commissioner of State Tax (Appeal), Purnea Division,

Bihar has dismissed the petitioner's appeal no. (ARN) AD100721000557O vide order dated 15.07.2021 (Annexure-5), solely on the ground of

delay. Having heard learned counsel for the parties at length, we are of the considered view, more so in view of the provisions of Section 30 of the

Bihar Goods and Service Tax Act, 2017, that the impugned order dated 8.8.2019 passed by Respondent No. 3 namely Joint Commissioner of State

Tax, Kishanganj, Purnea, Bihar in Reference No. ZA100819012545P (Annexure-3) and the order dated 15.07.2021 passed by the Appellate Authority

i.e. Additional Commissioner of State Tax (Appeal), Purnea Division, Bihar in Appeal No. (ARN) AD100721000557O (Annexure-5) needs to be

quashed and set aside. The Appellate Authority, ought to have been indulgent, in condoning the delay, more so on account of the prevalent current

Pandemic Covid-19. The Hon'ble Apex Court in several of its orders has extended the period of limitation, in complying with the statutory

requirement in initiating the proceedings before the judicial forum. Perhaps this fact is escaped the attention of the Appellate Authority. We are also of

the considered view that the Assessing Officer, in view of the bona fides of the petitioner ought to have invoked its power under Section 30 of the Act

and by withdrawing the order of cancellation of Registration, afforded opportunity to the petitioner to comply with the statutory provisions not only by

filing the returns, but also depositing the amount in terms of and under the provisions of the Act. We are satisfied of the petitioner's bona fides of

doing so expeditiously.

Shri D.V. Pathy, learned counsel for the petitioner states that within next two weeks petitioner shall file the returns; deposit the component of tax as

also the interest, if any payable thereupon; and comply with the order passed by the Assessing Officer.

Statement accepted and taken on record.

As such, we dispose of the present writ petition in the following terms:

- (a) We quash and set aside the impugned order dated 8.8.2019 passed by Respondent No. 3 namely Joint Commissioner of State Tax, Kishanganj, Purnea, Bihar in Reference No. ZA100819012545P (Annexure-3) and the order dated 15.07.2021 passed by the Appellate Authority i.e. Additional Commissioner of State Tax (Appeal), Purnea Division, Bihar in Appeal No. (ARN) AD100721000557O (Annexure-5);
- (b) Petitioner shall appear before the Assessing Officer on 7th of February, 2022 at 10:30 A.M. before which date he shall fully comply with the provisions of law;
- (c) The Assessing Authority shall decide the case on merits after complying with the principles of natural justice;
- (d) Opportunity to place on record all essential documents and materials, if so required and desired shall be afforded to the parties;
- (e) During pendency of the case, no coercive steps shall be taken against the petitioner.
- (f) The Assessing Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;
- (g) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;
- (h) The Assessing Authority shall decide the case on merits expeditiously, preferably within a period of two months from the date of appearance of the petitioner;
- (i) The Assessing Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;
- (j) Liberty reserved to the petitioner to challenge the order, if required and desired;
- (k) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;
- (l) 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;
- (m) We have not expressed any opinion on merits and all issues are left open;
- (n) If possible, proceedings during the time of current Pandemic [Covid-19] be conducted through digital mode;

The instant petition stands disposed of in the aforesaid terms.

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

Learned counsel for the respondents undertakes to communicate the order to the appropriate authority through electronic mode.