(2022) 04 PAT CK 0007

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4458, 4459 Of 2022

Zydus Healthcare Limited APPELLANT

Vs

State Of Bihar RESPONDENT

Date of Decision : 05-04-2022

Acts Referred:

Central Goods And Services Tax Act, 2017 — Section 107
Bihar Goods And Services Tax Act, 2017 — Section 107

Citation : (2022) 04 PAT CK 0007

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

Bench : Division Bench

Advocate : Gautam Kumar Kejriwal, Alok Kumar Jha, Vikash Kumar

Final Decision : Disposed Of

Judgement

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

“a) For issuance of writ or order of direction in the nature of certiorari for quashing of the appellate order dated 13.08.2021 issued vide memo number 1048 passed by the respondent number 2 whereby the appeal preferred by the petitioner under section 107 of the Central Goods And Services Tax Act, 2017 (hereinafter referred to as the Central act 2017 for short) and Bihar Goods And Services Tax Act, 2017 (hereinafter referred to as the Bihar act 2017 for short) has been rejected;

b) For issuance of a writ or order or direction upon the respondent number 2 to admit the appeal of the petitioner and decide the same on merits after hearing the petitioner and observing the statutory obligation under section 107 of the central act 2017 and Bihar act 2017;

c) For further restraining the respondents from taking any coercive action against the petitioner for recovery of the amount of tax, interest and penalty in terms of the order dated 03.02.2021 passed by the respondent number 3 during the pendency of the present writ application;

d) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case."

It is brought to our notice that vide impugned order dated 13.08.2021 passed by the Additional Commissioner of State Taxes (Appeals), Patna West, Patna, in Appeal Case No.AD1003210011292, the appeal of the petitioner against the order dated 03.02.2021, passed by the Assistant Commissioner of State Taxes, Patna West Circle, Patna for the tax period April, 2020 to June, 2020, has been rejected merely on the grounds of being barred by limitation. The appellate order is ex parte in nature.

In our considered view, the delay stands sufficiently explained on account of COVID 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 dated 13.08.2021 passed by the Additional Commissioner of State Taxes (Appeals), Patna West, Patna, in Appeal Case No.AD1003210011292;

(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 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;

(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 present petition. This shall be done immediately.

(f) Petitioner undertakes to appear before the Appellate Authority concerned on 11th of April, 2022 at 10:30 A.M., if possible through digital mode;

(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 to place on record all essential documents and materials, if so required and desired;

(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 four weeks 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 during the time of current Pandemic [Covid-19] 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.

