IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.459 of 2023

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M/s Shiv Shankar Coal Depo., a Proprietorship firm having its Place of Business at Naharpar, Kushabija, P.S. Dobhi, Gaya, Bihar through its Proprietor Malti Devi, Female, aged about 53 Years, Wife of Saudagar Chaudhary, Resident of Kusabija, P.S. Kusha, District-Gaya-824201.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-Cum-Commissioner, State Tax, Government of Bihar, Patna.
2. The Principal Secretary-Cum-Commissioner, State Tax, Government of Bihar, Patna.
3. The Additional Commissioner, State Tax (Audit), Gaya Magadh Division, Gaya.
4. The Joint Commissioner, State Tax (Audit), Gaya Magadh Division, Gaya.
5. The Joint Commissioner of State tax, Gaya Magadh Division, Gaya.
6. The Assistant Commissioner of State Tax, Magadh Gaya Circle, Gaya.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Anand Kumar, Advocate
For the Respondent/s : Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

3 03-04-2023 The instant writ petition has been filed under Article 226 of the Constitution of India seeking following reliefs:-

> *"a) For quashing the Appellate Order dated 05.09.2022 passed in appeal case GY/GST/177/2021-2022 by the Respondent Joint Commissioner Appeal State Tax Magadh Division, Gaya whereby the Order dated 13.02.2021 passed under Section 73(1) of the BGST Act, 2017 was affirmed without considering the fact available on record.*
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> *b) For quashing the Order dated 13.02.2021 passed under Section 73(1) of BGST Act, 2017 by Respondent Assistance Commissioner of*

State Tax, Gaya whereby tax to the tune of Rs. 1,96,112.96 was imposed along with interest and penalty and total demand to the tune of Rs. 12,05,724.96 was raised in form DRC-07 without considering the fact that the due to manual error the figures of outward supply in GSTR-3B for the month of May 2020 was entered as Rs. 2,22,22,525.60/- in place of correct figure which was duly corrected in GSTR- 1 dated 25.08.2021;

c) For quashing of impugned Demand notice issued in form GST-DRC-07 bearing No. ZD1002210093772 dated 13.02.2021;

d) For directing the Respondent to accept the corrected GST- 3R return for the month of May 2020 wherein corrects figures of outward supply was rectified in place of incorrect figure of Rs. 2,22,22,525.60/- which was entered due to manual typographical error in filing the return;

e) For holding that the Petitioner bonafidly could not undertake the correction in the GSTR-3B of May 2020 within the period permitted to make such corrections as provided under Section 39 of the BGST Act, 2017 as the Petitioner being a small businessman having inadequate knowledge of operating computer system was completely depended upon his Learned Counsel for filing of its returns.

f) For holding that the Petitioner must not be made to suffer with imposition of any liability of tax, interest or penalty in the fact that the figures of output supply in GSTR-3B of May 2020 was inadvertently entered more than the actual figure of output supply that too by the Learned Counsel Shree Manoj Kumar Sinha who was engaged by the Petitioner and who died due to Covid-19 due to which the corrections could not have been done within time; for any other relief/reliefs as your Lordships may deem fit and proper in the facts of the present case."

The petitioner is desirous of availing statutory remedy of appeal against the impugned order before the ***Appellate***

Tribunal (hereinafter referred to as ***"Tribunal"***) under Section 112 of the Bihar Goods and Services Tax Act (hereinafter referred to as "B.G.S.T. Act").

However, due to non-constitution of the ***Tribunal***, the petitioner is deprived of his statutory remedy under Sub-Section (8) and Sub-Section (9) of Section 112 of the B.G.S.T. Act.

Under the circumstances, the petitioner is also prevented from availing the benefit of stay of recovery of balance amount of tax in terms of Section 112 (8) and (9) of the B.G.S.T Act upon deposit of the amounts as contemplated under Sub-section (8) of Section 112.

The respondent State authorities have acknowledged the fact of non-constitution of the ***Tribunal*** and come out with a notification bearing Order No. 09/2019-State Tax, S. O. 399, dated 11.12.2019 for removal of difficulties, in exercise of powers under Section 172 of the B.G.S.T Act which provides that period of limitation for the purpose of preferring an appeal before the ***Tribunal*** under Section 112 shall start only after the date on which the President, or the State President, as the case may be, of the ***Tribunal*** after its constitution under Section 109 of the B.G.S.T Act, enters office.

This Court is, therefore, inclined to dispose of the instant writ petition in the following terms:-

(i) Subject to deposit of a sum equal to 20 percent of the remaining amount of tax in dispute, if not already deposited, in addition to the amount deposited earlier under Sub-Section (6) of Section 107 of the B.G.S.T. Act, the petitioner must be extended the statutory benefit of stay under Sub-Section (9) of Section 112 of the B.G.S.T. Act. The petitioner cannot be deprived of the benefit, due to non- constitution of the Tribunal by the respondents themselves. The recovery of balance amount, and any steps that may have been taken in this regard will thus be deemed to be stayed. It is not in dispute that similar relief has been granted by this Court in the case of *SAJ Food Products Pvt. Ltd. vs. The State of Bihar & Others* in *C.W.J.C. No. 15465 of 2022*.

(ii) The statutory relief of stay, on deposit of the statutory amount, however in the opinion of this Court, cannot be open ended. For balancing the equities, therefore, the Court is of the opinion that since order is being passed due to non-constitution of the Tribunal by the respondent-Authorities, the petitioner would be required to present/file his appeal under Section 112 of the B.G.S.T. Act, once the Tribunal is constituted and made functional and the President or the State President may enter office. The appeal would be required to be filed observing the statutory requirements after coming into existence of the Tribunal, for facilitating consideration of the appeal.

(iii) In case the petitioner chooses not to avail the remedy of appeal by filing any appeal under Section 112 of the B.G.S.T. Act before the Tribunal within the period which may be specified upon constitution of the Tribunal, the respondent-Authorities would be at liberty to proceed further in the matter, in accordance with law.

With the above liberty, observation and directions, the writ application stands disposed of.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

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