# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Civil Writ Jurisdiction Case No.1281 of 2023**

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M/S Bihar Fertilizer Agency a Proprietorship Firm having its place of business situated at House of Parvati Devi, Gurhatta Chowk, Mirjan Hat, P.S. Gurhatta Chowk, Town and District Bhagalpur through its Proprietor Pradeep Kumar Gupta, (Male), aged about 62 years son of Si Brahma Prasad Lal Resident of Masakchak, Jha Colony, Jagdishpur, P.S. Adampur, Town and District Bhagalpur- 812002

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Commissioner, Department of State Taxes, Government of Bihar, Patna.
3. The Additional Commissioner of State Taxes (Appeal), Bhagalpur Division, Bhagalpur.
4. The Assistant Commissioner of State Taxes, Bhagalpur Circle, Bhagalpur.

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Manoj Kumar Keshri, Advocate |
| For the Respondent/s | : | Mr. Vivek Prasad, GP-7 |

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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:-

> *"(i) For quashing the Memo No. 265 dt. 31.08.2022 passed by the Respondent Additional Commissioner, State Taxes (Appeal), Bhagalpur Division, Bhagalpur whereby the Appeal bearing No.(ARN)AD 1003220027411 has been dismissed for non-prosecution and without hearing the Appeal on merits;*
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> *(ii) For quashing the entire Assessment proceeding for the Tax period April 2020 to March 2021 passed vide order dated 3.02.2021 by the Respondent Assistant Commissioner of State Taxes, Bhagalpur Circle, Bhagalpur under*

*Bihar Goods & Service Tax Act, 2017 (hereinafter referred to as the BGST) and Central Goods & Service Tax Act, 2017 (hereinafter referred to as CGST) whereby an illegal and arbitrary order under sec 73 of BGST has been passed and demand in DRC-07 has been raised for the tax of Rs.4,39,905/- Interest Rs. 43,330.64p and Penalty Rs. 43,990.50p for both CGST & SGST totaling to Rs. 10,54,452.28p without passing any order thereof regarding the said quantification of amount and further revised the demand under sec 73 of BGST vide order dated 11.02.2022 and raised the demand under vide DRC-07 for CGST & SGST of Rs. 2,60,286/-, Interest Rs. 37,340/- and Penalty Rs.26,028/- Total being Rs 3,23,794/- respectively and again revising the earlier demand vide order dated 28.02.2022 recalling the earlier order dated 11.02.2022 without giving reasonable opportunity of hearing to the Petitioner as the petitioner and his representative was suffering from COVID-19, Omicron Virus during the relevant period;*

*(iii) For declaration that the said demand was illegal as the same was revised by rectification order dt. 28.02.2022 whereby the demand was revised to NIL. However, without proper calculation and without giving proper opportunity of hearing to the Petitioner, the impugned orders have been passed and/or to grant such other relief(s) to which the Petitioner is entitled in the facts and circumstances of the 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)**

shashank/-

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