IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1920 of 2023

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Angel Engicon Private Limited through the Director Atish Kumar, Ganga Vihar, Anisabad, Near Beur Jail, Patna- 800002.

... ... Petitioner/s

Versus

1. The State of Bihar through Additional Commissioner of State Tax (Appeal) West Division, Patna.
2. Assistant Commissioner of State Tax, South Circle, Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Daya Shankar Prasad Sinha, Advocate
For the Respondent/s : Mr. Vivek Prasad, GP7

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

ORAL ORDER

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

2 16-02-2023 The writ petitioner has assailed an order dated 08.06.2022 passed by the Additional Commissioner of State Tax (Appeal), Patna West, Patna, whereby his appeal against the order of assessment has been rejected.

The petitioner has 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"). Sub-Section 8 of Section 112 reads as follows:-

> *"(8) No appeal shall be filed under Sub-Section (1), unless the appellant has paid-*
>
> *(a) in full, such part of the amount of tax, interest, fine, fee and penalty*

arising from the impugned order, as is admitted by him, and

(b) a sum equal to twenty percent of the remaining amount of tax in dispute, in addition to the amount paid under Sub-Section (6) of the Section 107, arising from the said order, in relation to which the appeal has been filed."

Apparently, thus, had an appeal been filed by the petitioner in accordance with the requirement of Section 112 (8) of the B.G.S.T. Act, the recovery proceedings for the balance amount would have been deemed to be stayed till disposal of the appeal, as per Sub-section 9 of Section 112 of the B.G.S.T. Act, which reads as follows:-

"(9) Where the appellant has paid the amount as per Sub-Section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal."

Learned counsel for the petitioner submits that 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.

It appears that conscious of the fact of non-constitution of the ***Tribunal,*** a notification dated 11.12.2019 for removal of difficulties, in exercise of powers under Section 172 of the B.G.S.T. Act has been issued by the State of Bihar. Clause 2 of the notification reads as follows:-

> *"2. For the removal of difficulties, it is hereby clarified that for the purpose of calculating,-*
> *(a) the "three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal" in sub-section (1) of Section 112, the start of the three months period shall be considered to be the later of the following dates:-*
> *(i) date of communication of order; or*
> *(ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under Section 109, enters office;"*

Evidently, thus, the notification dated 11.12.2019 provides that the period of limitation, for the purpose of preferring an appeal under Section 112 of the B.G.S.T. Act, 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.

It is thus apparent that petitioner's statutory right to prefer an appeal survives.

It is also the submission of learned counsel for the petitioner that the petitioner is desirous of availing the statutory remedy of appeal and 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. He, however, is prevented from availing statutory remedy, since the ***Tribunal*** has not yet been constituted.

Considering the facts and circumstances above, including the admitted position regarding non-constitution of the ***Tribunal*** under Section 109 of the B.G.S.T. Act, this Court is of the opinion that keeping the writ petition pending would serve no useful purpose.

If the petitioner makes a deposit of a sum equal to 20 percent of the remaining amount of tax in dispute, in addition to the amount deposited earlier under Sub-Section 6 of Section 107 of the B.G.S.T. Act, then the petitioner must be extended the statutory benefit of stay under Sub-Section 9 of Section 112 of the B.G.S.T. Act, for he 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.

The statutory relief of stay on deposit of the statutory amount, 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.

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.

(Chakradhari Sharan Singh, ACJ)

(Madhuresh Prasad, J)

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