IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1101 of 2023

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Sharda Construction a partnership firm having its office at Fulwari, Amawa Majhar, Bettiah, Muffasil Supaul Bihar through its Partner Shreekrishna Prasad (Male) aged about 53 years son of Ambika Prasad, resident of Ward No. 2, Amawa Majhar, West Champaran, Bihar - 845438.

... ... Petitioner/s

Versus

1. State of Bihar through Commissioner of State Tax, Bihar, Patna having its Office at Vikas Bhawan, Patna.
4. Addl. Commissioner of State Tax (Appeals), Tirhut Division, Muzaffarpur.
5. Asst. Commissioner of State Tax, Bettiah, Tirhut, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D.V.Pathy, Advocate Mr. Hiresh Karan, Advocate Mr. Sadashiv Tiwari, 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 JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-04-2023

The petitioner has approached this Court challenging an appellate order dated 22.09.2022 (Annexure-3) which dismissed the appeal on the ground of non-prosecution; wherein the challenge was of an assessment made in the year 2019-20. Pursuant to the same, the Assessing Authority has also issued a notice dated 22.12.2022 under Section 79(1)(c) of the Bihar Goods and Services Tax Act, 2017 attaching the petitioner’s bank account. The sole contention of the petitioner is that the notice issued for assessment which is produced as Annexure-1 series was not signed by the State Tax Authority. The petitioner does not dispute the receipt of notice. Before assessment was completed, an order was passed quantifying the amount of tax, interest and penalty, as is seen from Annexure-2, which was also received by the petitioner, against which an appeal was filed before the Respondent No. 2. Before the Assessment Officer or before the Appellate Authority the respondents have not raised this contention with regard to the absence of the signature. Annexure-3 is an order passed by the Appellate Authority for the reason that petitioner had not appeared consequently on 5 occasions when the matter was posted before the Appellate Authority. It is only on the default of the petitioner or his counsel that the appeal stood dismissed. We find no reason to invoke our extraordinary jurisdiction providing remedy under Article 226 on the specific allegation raised, which did not, in any manner, prejudice the petitioner or his opportunity for hearing before the Assessing Officer or the Appellate Authority. The attempt now is to seek a stay of proceedings based on orders passed by this Court allowing stay of recovery on payment of 20% of the balance taxes, till the Appellate Tribunal under the Goods and Services Tax Act is constituted. We are not inclined to grant such indulgence to the petitioner who had consistently failed to appear before the Appellate Authority.

We hence, reject the writ petition.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

Anushka/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	19.04.2023
Transmission Date	