IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1944 of 2023

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Ujjain Engicon India Private Limited a Company incorporated under the Companies Act, 1956, having its Head Office at Valmiki Nagar, Bihar through its Director Mahendra Kishore Singh (Male), aged about 46 years, son of Harendra Kishore Singh, resident of Gram Valmikinagar Tanki Bazar, Bhaisalotan, P.S. Valmikinagar, District West Champaran, Bihar 845107.

... ... Petitioner

Versus

1. The State of Bihar through the Commissioner of State Tax, having its office at Vikas Bhawan, Bailey Road, Patna, Bihar.
2. The Additional Commissioner of State Tax (Appeal), Tirhut Division, Muzaffarpur, Bihar.
3. The Joint Commissioner of State Tax, Bagha Circle, Bagha, District West Champaran, Bihar.
4. The Executive Engineer, Rural Works Department, Works Division, Bagha - 1, West Champaran, Bihar.
5. The Executive Engineer, Road Construction Department, Works Division, Kachhari Road, Bettiah, West Champaran, Bihar.
6. The Executive Engineer, Rural Works Department, Works Division, Narkatiyaganj, West Champaran, Bihar.

... ... Respondents

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Appearance :

For the Petitioner	:	Mr. Prabhat Ranjan, Adv.
For the State	:	Mr. Vikash Kumar, SC-11

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

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

2 25-02-2023 The instant writ petition has been filed under Article 226 of the Constitution of India seeking following reliefs:-

"i) Quashing of the ex parte order dated 28.02.2020 passed in connection with Reference NO. ZA100220010910P under Section 73 of the Goods and Services Tax Act, 2017

whereby, the Input Tax Credit (Tax period August 2018 to December 2018; corresponding to financial year 2018-19) admissible to any assessee has been disallowed and an amount of Rs. 2,15,80,446.70 has been ascertained to be recoverable for which DRC-07 has been directed to be issued;

(ii) Quashing of the order in appeal dated 16.12.2021 passed by the appellate authority in connection with Appeal No. AD 1003200024049 by which, without adverting to any of the single grounds taken in the Appeal by most cryptic and vague order, the appeal has been rejected and the demand has been affirmed;

(iii) Quashing of the consequential order / notice dated 07.01.2023 to third person issued under Section 79 (1) (c) for recovery by which, an amount of Rs. 3,97,46,810.00 has been directed to be recovered from the admissible payment etc. of the petitioner as contained in Letter bearing Memo No. 183 dated 07.01.2023, 184 dated 07.01.2023, 185 dated 07.01.2023 and 186 dated 07.01.2023 (Annexure 4 Series); and

(iv) Restraining the respondents from giving effect to for taking any

coercive action in consequence of the order in original dated 28.01.2020 (Annexure 1) and, the appellate order dated 16.12.2021 (Annexure 3) and all other consequential actions contained in Annexure 4 Series arising there from relating to (Tax period August 2018 to December 2018; corresponding to financial year 2018-19).”

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.

Considering the facts and circumstances noted above, this Court in the case of ***Angel Engicon Private Limited vs. the State of Bihar & Anr.*** passed in **C.W.J.C No. 1920 of 2023** has disposed of the writ petition with certain observations and directions, allowing certain liberty to the petitioner, which reads as follows:

> "*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."

The instant writ petition is disposed of in the same terms, allowing the petitioner liberty as has been granted to the petitioner in **C.W.J.C. No. 1920 of 2023**.

(Chakradhari Sharan Singh, ACJ)

(Madhuresh Prasad, J)

shyambihari/-

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