IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3021 of 2023

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Badri Prasad Yadav Son of Sukhdev Prasad Yadav, resident of Ward No. - 23, P.S. - Saharsha, P.O. and Dist. - Saharsha.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of Commercial Taxes, Govt. of Bihar, Patna.
2. The Additional Commissioner of State Taxes, Saharsa Circle, Saharsa.
3. The Assistant Commissioner of State Taxes Patliputra Circle, Saharsa.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Shailesh Anand, 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 : 18-05-2023

The petitioner in the writ petition is aggrieved with the dismissal of the appeal by an order dated 21.09.2022, which dismissal was on account of the delay in filing the same. Admittedly, a show-cause notice was issued under Section 73 of the Bihar Goods and Services Tax Act-2017 (hereinafter referred to as BGST Act) on 08.11.2021, pursuant to which an order was passed on 27.12.2021, which is produced as Annexure-P/2. On the same day on which the order was issued a demand notice was also issued, which is produced as Annexure-P/1 and appeal against the order dated 27.12.2021 was filed on 02.09.2022 and the same stood dismissed by order dated 21.09.2022, produced as Annexure-P/4. The petitioner in the writ petition admitted in paragraph no. 6 that in the assessment year 2020-21, there arose wrongful claim of input tax credit by the petitioner, since the supplier had not paid the tax in question to the department.

The scope of the litigation was sought to be expanded by a Interlocutory Application filed against a demand issued by the tax officer for the very same period based on the order dated 27.12.2021, which are produced as Annexure- P/4 and P/5**.** The petitioner also placed reliance on the judgment of this Court in C.W.J.C. No. 2125 of 2019.

At the outset, it has to be noticed that C.W.J.C. No. 2125 of 2019 was with respect to the transitional credit claimed by the dealer for the assessment years 2007-08 and 2011-12, which were the assessment years regulated by the Value Added Tax Act. The issue arising was also with respect to whether the transitional credit claimed by the dealer in the credit ledger could be treated as an availment of credit, without any other positive act, resulting in the proceedings under section 73 of the Act.

We do not find any such issue of transitional credit arising from the above case and the contention is only of input tax claimed, wrongly.

The counter affidavit of the respondent also specifically speaks of a distinction insofar as the judgment relied on being purely on transitional credit, which issue does not at all arise in the present proceedings. The counter affidavit specifically points out that the admission of the petitioner regarding non-payment of tax by the supplier stands against the specific mandate under Section 16(2), of a registered entity not entitled to the credit of input tax, if the tax charged in respect of such supply has not been actually paid to the government either by way of cash or through utilization of Input Tax Credit admissible in respect of the said supply. We are convinced that the judgment relied on has no application and that in such circumstances, the only question is as to whether the determination of the taxable amount by reason of disallowance of input tax claimed, as made by the Assessing Officer, ought to be considered in a writ petition under Article 226 of the Constitution of India.

In the present case, the assessment order was dated 27.12.2021 and the appeal was filed only on 02.09.2022.

The Hon’ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020**, In Re: Cognizance For Extension of

Limitation. Therein, due to the pandemic situation limitation was saved between 15.03.2020 till 28.02.2022. It was also directed that an appeal could be filed within ninety days from 01.03.2022. Hence, an appeal could have been filed on or before 29.05.2022, which provision was not availed by the petitioner herein. The Hon’ble Supreme Court also declared that if a longer period than 90 days is provided in a Statute, then that longer period will apply. In the BGST Act, u/s 107(4) there is a provision for condonation of delay, if the appeal is filed delayed, within one month of expiry of limitation. Even if that be deemed to be appealable then the appeal ought to have been filed by 28.06.2022. The appeal is said to have been filed only on 02.09.2022, after 65 days from the date on which even the limitation period as stipulated by the Hon’ble Supreme Court, expired.

We also notice the contours of the jurisdiction under Article 226 of the Constitution of India to interfere with appellable orders laid down by the Hon’ble Supreme Court in **State of H.P & Ors. v. Gujarat Ambuja Cement Limited & Anr.; (2005) 6 SCC 499**. It has been held that if an assessee approaches the High Court without availing the alternate remedy, it should be ensured that the assessee has made out a strong case or that there exists good grounds to invoke the extraordinary jurisdiction. While reiterating that Article 226 of the Constitution confers very wide powers on the High Court, it was clarified that nonetheless the remedy of writ is an absolutely discretionary remedy. The High Court, hence, can always refuse the exercise of discretion if there is an adequate and effective remedy elsewhere. The High Court can exercise the power only if it comes to the conclusion that there has been a breach of principles of natural justice or due procedure required for the decision has not been adopted. The High Court would also interfere if it comes to a conclusion that there is infringement of fundamental rights or where there is failure of principles of natural justice or where the orders and proceeding are wholly without jurisdiction or when the vires of an Act is challenged. There is no such plea made by the petitioner in the present case against the impugned order.

The claim of Input Tax Credit and the computation thereon ought to have been agitated before the appellate authority. Having not availed the statutory remedies available, the petitioner cannot seek to approach this Court under Article 226 of the Constitution of India to challenge an assessment order especially with respect to the computation of the turn over and the determination of the taxable turnover and the tax payable, as arrived at by the Assessing Officer. In the BGST Act, an appellate remedy is provided under Section 107, which has to be availed within a period of three months or with a delay within a further period of one month.

It is trite law that when there is a specific period for delay condonation provided, there cannot be any extension of the said period by the Appellate Authority or by this Court under Article 226 of the Constitution.

The petitioner by his own failure has not availed the appellate remedy and in that circumstance, there can be no invocation of the extraordinary jurisdiction under Article 226 of the Constitution of India. We also find that there is no jurisdictional error, violation of principles of natural justice or abuse of process of Court averred or argued by the petitioner in the above writ petition. The petitioner seeks to challenge the demand on the ground that the Input Tax Credit claim made by the petitioner is proper; which is merely the determination of the tax payable on the basis of the various claims validly arising from the statute and computation; which cannot be agitated in a petition under Article 226 of the Constitution of India. The gross delay stands against the petitioner.

As such, the writ petition would stand dismissed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

aditya/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	20.05.2023.
Transmission Date	