IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2071 of 2023

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M/S Naz Enterprises, a partnership firm having its address at Ward No.- 22, Khagra Nawab Road, Kishanganj, Bihar, Through its Proprietor Majid Hussain @ Md. Majid Hussain (M), aged about 64 years, Son of Sirajuddin, resident of Ward No.- 22, Khagra Nawab Road, Kishanganj.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Commercial Tax Department, Bihar having its office at Vikas Bhawan, bailey Road, Patna, Bihar.
2. The Additional Commissioner of State Taxes (Appeal), Commercial Tax Department, Purnea Division, Purnea, Bihar.
3. The Joint Commissioner, Commercial Tax Department, Kishanganj, Bihar.
4. The Assistant Commissioner of State Tax, Kishanganj Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrityunjay Kumar, 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 issuance of a writ in the nature of Certiorari or any other appropriate writ, order or direction to set aside the order dated 28.11.2022 (Annexure- 2) passed in Appeal No. (ARN) AD101122003448V passed by the Respondent No.-2 the appellate authority, whereby the appeal of the petitioner was dismissed solely on the ground of delay without examining the merits of the case*
>
> ***(II)** For issuance of the writ in the nature Certiorari or any other appropriate writ, order or direction for quashing of order dated 18.11.2021 (Annexure 1) passed by the*

> *Respondent No.-3 & 4 under section 73 of the Bihar Goods & Service Tax Act, 2017 and the consequent demand order dated 20.11.2021 (Annexure 1) issued against the petitioner for the period of April 2020 to March 2021 levying tax of Rs. 32,78,348/- (Thirty Two lakhs Sixty Eight thousand Three hundred and Forty eight only) and interest of Rs. 3,44,226/- (Three lakhs Forty Four Thousand Two Hundred and Twenty Six only) and penalty of Rs. 3,27,834/- (Three lakhs Twenty Seven Thousand Eight hundred and Thirty Four only).*
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> ***(III)*** *Be pleased to stay the operation of impugned order and demand dated 20.11.2021 (Annexure 1) passed by the Respondent No.-3 against the petitioner, during the pendency of the writ application*
>
> ***(IV)*** *In alternate, be please to remand back the appeal of the petitioner to the appellate authority i.e. Respondent No.- 2, after condoning the delay in filing the appeal which was due to covid-19 pandemic lockdown and restriction, and be pleased to direct Respondent No.-2 to decide the appeal of the petitioner on merit."*

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)

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