IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2172 of 2023

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M/s Modern Builders and Contractors, (A Partnership Firm) having it Registered office- Kacchi Sarai, Hanthi Chowk, P.S. Muzaffarpur Sadar, District-Muzaffarpur, Bihar, through its Partner Mr. Pankaj Kumar, aged about 53 Years, S/o Banke Bihari Prasad Singh

... ... Petitioner/s

Versus

1. The State of Bihar through Commissioner of Bihar Good and Service Tax, having its Office at New Secretariat Patna Bihar.
2. Joint Commissioner of State Tax, East Circle, Muzaffarpur Bihar.
3. Assistant Commissioner of State Tax, East Circle Muzaffarpur, Bihar.
4. Additional Commissioner (Appeal), Tirhut Division, Muzaffarpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anurag Saurav, 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 appropriate writ/order/direction for setting aside order bearing Order dated: 13.09.2022 passed by Additional Commissioner (Appeal), Tirhut Division, Muzaffarpur in Appeal Case bearing Appeal Case No. AD1004210006225 for the financial year 2019-20 whereby and where under the Appellate Authority dismissed the Appeal on the ground of non filing of Hard Copy and Appeal has been filed after a delay of 103 days and dismissed the appeal on the ground of limitation.*
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> *(ii) For Issuance of an appropriate writ/ order/ direction for setting aside Ex parte order dated 11.01.2021 passed by respondent no.3 i.e*

Assistant Commissioner of State Tax jurisdiction, East Circle, Muzaffarpur, Bihar, whereby and where under respondent no.3 has imposed tax amount of Rs.4,36,388/- under CGST and SGST (along with interest and penalty) i.e a total amount of Rs. 8,72,776/- under section 74(9) of BGST Act read with Rule 142(5) of BGST Rules, 2017 and the said proceeding has been initiated by the respondent authorities on the ground that a deduction of TDS in the name of petitioner were reflecting in GSTR-7 of Tax Deductor of petitioner and the said amount has not been disclosed by the petitioner in their return and petitioner had suppressed the Turn Over while filing the return in the Form of GSTR3B and a direction was issued to raised demand in the Form of GST DRC 07.

(iii) For setting aside the demand notice issued in the Form of DRC 07 Dated:11.01.2021.

(iv) For restraining the respondent authority for issuance of DRC 13 for recovery of tax amount through the Bank account attachment.

(v) For issuance of an appropriate Writ(s), order(S), and/or direction(s), as Your Lordships may deem fit and proper in the facts and circumstances of this case in the interest of justice."

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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