

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2180 of 2023

M/s Kiraye Baba Construction Private Limited through the Proprietor
Abhishek Kumar, Male aged about 22 Years, Son of Binod Kamat, Resident
of Village-Chharapatti, Siktiahi, District-Madhubani, Bihar-847227.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner of Commervial State Taxes,
New Secretariat, Patna.
2. The Assistant Commissioner, State Taxes, Jhanjharpur, Darbhanga. Bihar.
3. The Joint Commissioner (Appeal), State Taxes, Darbhanga Circle,
Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Archana Sinha @ Archana Shahi, Advocate
For the Respondent/s : Mr. Vikash Kumar, SC-11

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:-

- “(a) For setting aside the order dated 22.09.2022
passed by Joint Commissioner (Appeal) by
which he has imposed penalty and interest of
Rs. 3,96,964.28 and Rs. 4,24,423.14/- for the
period July, 2019.*
- (b) For setting aside the demand as per GST APL-
04 dated 22.09.2022.*
- (c) For setting aside the order dated 06.03.2020 by
which the Assistant Commissioner, State Taxes
has passed the order without appreciating the
merit of the case and imposed tax, interest and
penalty of Rs. 4,67,126.40/- and Rs. 467126/-
upon the petitioner.*
- (d) For setting aside the demand notice DRC-7
order dated 09.03.2020 issued by the
Respondent.*



- (e) For restraining the respondents for not recovering the tax amount from the petitioner till the disposal of the writ petition.*
- (f) For any other consequential relief or reliefs for which the petitioner is found entitled during the course of hearing of the writ petition.”*

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)

shashank/-

U			
---	--	--	--

