

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2396 of 2023

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M/S Shashank Auto Private Limited through the Proprietor Shakti Swarup Sharma, Male, aged about 57 years, Son of Shiv Swarup Sharma, Resident of Village- Chaturbhuj Thakur Marg, Kalambagh Road, Muzaffarpur, Musahri, Muzaffarpur, Bihar- 842002

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner of State Taxes, New Secretariat, Patna.
2. The Additional Commissioner, State Taxes, Muzaffarpur West, Tirhut.
3. Assistant Commissioner, State Taxes, West Muzaffarpur Circle.

... .. Respondent/s

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Appearance :

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

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-04-2023

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 15.12.2022 and demand order dated 19.12.2022 passed by the Additional Commissioner, State Taxes Appeal by which he has imposed the tax, penalty and interest.

(b) For restraining the respondents for not recovering the tax amount from the petitioner till the disposal of the writ petition.



(c) 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)

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.04.2023
Transmission Date	

