IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2177 of 2023

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Kumar Ram Ranjan Singh (Male), aged about 59 years, Son of Late Parmeshwar Singh, Resident of Village- Jit Jhingoi Jamui, Police Station-Khaira, District-Jamui.

... ... Petitioner

Versus

1. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeal) Bhagalpur Division, Bhagalpur.
3. The Assistant Commissioner of State Taxes, Jamui, Bhagalpur.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar, Adv.
For the State	:	Mr.Vivek Prasad, GP-7

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

2 25-02-2023 The instant writ petition has been filed under Article 226 of the Constitution of India seeking following reliefs:-

> *"a) For issuance of a writ in the nature of certiorari for quashing of the ex-parte appellate order dated 14.01.2023 issued by the respondent no.2 in Appeal Case Number (ARN) AD1003220015416 including GST APL-04 whereby the appeal preferred by the petitioner against the order dated 13.01.2021 passed by the respondent no.3 under Section 74 of the Bihar Goods And Services Tax Act 2017 (hereinafter referred to as the Bihar Act*

2017 for short) and the summary of order issued in form GST DRC-07 dated 13.01.2021 has been rejected.

b) For issuance of a writ in the nature of certiorari for quashing of the ex parte order dated 13.01.2021 passed and summary of the order in form GST DRC - 07 dated 13.01.2021 issued by the respondent no. 3 whereby liability of tax, penalty and interest has been imposed in a proceeding under Section 74 of the Bihar Act 2017 for the tax period April 2020 to April 2021.

c) For further restraining the respondents from making recovery of the amount of tax, interest and penalty imposed and raised in terms of the impugned order dated 13.01.2021 passed by the respondent no. 3.

d) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case."

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.

Considering the facts and circumstances noted above, this Court in the case of ***Angel Engicon Private Limited vs. the State of Bihar & Anr.*** passed in **C.W.J.C No. 1920 of 2023** has disposed of the writ petition with certain observations and directions, allowing certain liberty to the petitioner, which reads as follows:

> "*If the petitioner makes a deposit of a sum equal to 20 percent of the remaining amount of tax in dispute, in addition to the amount deposited earlier under Sub-Section (6) of Section 107 of the B.G.S.T. Act, then the petitioner must be extended the statutory benefit of stay under Sub-Section (9) of Section 112 of the B.G.S.T. Act, for he 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.*
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> *The statutory relief of stay on deposit of the statutory amount, 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.

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."

The instant writ petition is disposed of in the same terms, allowing the petitioner liberty as has been granted to the petitioner in **C.W.J.C. No. 1920 of 2023**.

(Chakradhari Sharan Singh, ACJ)

(Madhuresh Prasad, J)

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