IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4298 of 2023

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M/s Shivam Enterprises through Proprietor Jai Prakash Gupta (Male), aged about 52 years, S/o Sri Gurucharan Sah, resident of Village-Sidhuli, New Sidhuli Road, P.S.-Dalmia Nagar, District-Rohtas (Bihar)

... ... Petitioner/s

Versus

1. The State of Bihar through the State Tax Commissioner of Commercial Taxes Bihar, Patna.
2. State Tax Commissioner of Commercial Taxes, Bihar Vikash Bhawan, Patna-800001.
3. The Assistant Commissioner State Taxes, Sasaram Circle Sasaram, Distt-Rohtas.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Alok Kumar, Advocate
		Mr. Samir Kumar Sinha, Advocate
		Mr. Sachida Nand Kishore Pd. Sinha, 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 JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-05-2023

The above writ application under Article 226 of the Constitution of India challenges an assessment order dated 22.07.2021. The petitioner, an assessee under the Bihar Goods and Services Tax Act, 2017 (for brevity “BGST Act”) admits that he received a show-cause notice regarding an excess Input Tax Credit (ITC) claim, after scrutiny of his return for the Assessment Year 2019-20. The petitioner preferred an explanation which was rejected and an assessment order passed at Annexure-I dated 22.07.2021. The petitioner seeks to challenge the rejection of the objection filed and also the demand raised pursuant to the assessment order with interest in the above writ petition under Article 226.

At the outset, it is to be noticed that the claim is grossly delayed, the writ petition being of the year 2023 while the assessment itself was completed in the year 2021.

We also notice the contours of the jurisdiction under Article 226 of the Constitution of India to interfere with appellable orders laid down by the Hon'ble Supreme Court in **State of H.P & Ors. v. Gujarat Ambuja Cement Limited & Anr.; (2005) 6 SCC 499**. It has been held that if an assessee approaches the High Court without availing the alternate remedy, it should be ensured that the assessee has made out a strong case or that there exists good grounds to invoke the extraordinary jurisdiction. While reiterating that Article 226 of the Constitution confers very wide powers on the High Court, it was clarified that nonetheless the remedy of writ is an absolutely discretionary remedy. The High Court, hence, can always refuse the exercise of discretion if there is an adequate and effective remedy elsewhere. The High Court can exercise the power only if it comes to the conclusion that there has been a breach of principles of natural justice or due procedure required for the decision has not been adopted. The High Court would also interfere if it comes to a conclusion that there is infringement of fundamental rights or where there is failure to adhere to principles of natural justice and where the orders and proceeding are wholly without jurisdiction or when the vires of an Act is challenged. There is no such plea made by the petitioner in the present case against the impugned order.

The claim of Input Tax Credit and the computation thereon ought to have been agitated before the appellate authority. Having not availed the statutory remedies available, the petitioner cannot seek to approach this Court under Article 226 of the Constitution of India to challenge an assessment order especially with respect to the computation of the turn over and the determination of the taxable turnover and the tax payable, as arrived at by the Assessing Officer. In the BGST Act, an appellate remedy is provided under Section 107, which has to be availed within a period of three months or with a delay within a further period of one month.

It is trite law that when there is a specific period for delay condonation provided, there cannot be any extension of the said period by the Appellate Authority or by this Court under Article 226 of the Constitution.

The petitioner by his own failure has not availed the appellate remedy and in that circumstance, there can be no invocation of the extraordinary jurisdiction under Article 226 of the Constitution of India. We also find that there is no jurisdictional error, violation of principles of natural justice or abuse of process of Court averred or argued by the petitioner in the above writ petition. The petitioner seeks to challenge the demand on the ground that the Input Tax Credit claim made by the petitioner is proper; which is merely the determination of the tax payable on the basis of the various claims validly arising from the statute and computation; which cannot be agitated in a petition under Article 226 of the Constitution of India. The gross delay also stands against the petitioner.

As such, the writ petition would stand dismissed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

P.K.P./Anushka

AFR/NAFR	
CAV DATE	
Uploading Date	19.05.2023
Transmission Date	