

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3430 of 2023

M/s Hariyana Trading Co. a proprietorship firm having its place of business at Gulabbagh, Purnea, Bihar- 854326 through its proprietor namely Raj Kumar Goyal male aged about 49 years son of Raghuvir Prasad Agrawal resident of Gulabbagh, Purnea, Bihar- 854326.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeals) Purnea Division, Purnea.
3. The Joint Commissioner of State Taxes, Purnea Circle, Purnea. (2018-2019)

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate Mr. Mukund Kumar, Advocate Mr. Atal Bihari Pandey, Advocate Mr. Alok Kumar Jha, Advocate
For the Respondent/s	:	Mr. Vivek Prasad (GP-7)

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL ORDER

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

2 20-03-2023 Learned counsel for the petitioner states that there are typographical errors in the cause title of the writ petition wherein 'Patna' has been typed in place of 'Purnea' while describing Respondent Nos. 2 and 3.

Let the same be corrected in course of the day.

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



“a) For issuance of writ in the nature of certiorari for quashing of the order dated 06.04.2022 issued vide memo number 122 Purnea by the respondent number 2 whereby the appeal preferred by the petitioner under section 107 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the central act 2017 for short) and Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as the Bihar act 2017 for short) has been rejected;

b) For issuance of writ or order in the nature of certiorari for quashing of the order dated 10.02.2022 passed by the respondent number 3 under section 73 of the central act 2017 and Bihar act 2017 and also for quashing of the summary of order issued in form GST DRC-07 dated 10.02.2022 issued in terms of rule 142 (5) of the Central Goods and Services Tax Rules, 2017;

c) For the issuance of writ in the nature of certiorari for quashing of the notice of demand issued by the respondent number 3 in form GST DRC - 13 vide process number 1212 dated 16.12.2022 and process number 97 dated 12.01.2023 served upon the banker and the purchaser attached with the petitioner for recovery of the amount of tax, interest and penalty determined in terms of the order dated 10.02.2022 and the appellate order dated 06.04.2022;

d) For holding and a declaration that the issuance of notice of demand issued in form GST DRC - 13 in exercise of powers under section 79 of the central act 2017 the Bihar act 2017 while the application



for rectification of the appellate order dated 06.04.2022 under section 161 of the central act 2017 being pending is illegal, without jurisdiction and bad in law;

e) For further restraining the respondents from taking any further coercive action against the petitioner for recovery of the amount of tax, interest and penalty in terms of the impugned orders as the whole proceeding initiated against the petitioner resulting in such orders is wholly without jurisdiction and unsustainable in the eye of law;

f) For further holding and a declaration that the petitioner cannot be denied the benefit of input tax credit in terms of section 16 (2) read with section 9 once the petitioner has already parted with the tax payable under central act 2017 and Bihar act 2017 in favour of the supplier against tax invoices and physical receipt of goods even if the supplier has defaulted in payment of such tax to the government;

g) For further holding and a declaration that it is the statutory responsibility of the respondent number 3 or the competent and jurisdictional authority having jurisdiction over the supplier of the petitioner to proceed against him for his failure to pay tax collected from the petitioner in terms of section 42 and 76 of the central act 2017 and Bihar act 2017;

h) 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.

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)

(Partha Sarthy, J)

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