IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3492 of 2023

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M/s Manoj Kumar Mandal a proprietary concern having its office at Sardhodih, Anchal-Sono, District-Jamui, Bihar through its proprietor Manoj Kumar Mandal (Male, aged about 44 years), son of Shri Eshwar Mandal, Resident of Village-Lakhankiyari, Post-Dumari, P.S.-Sono, District-Jamui, Bihar-811314.

... ... Petitioner/s

Versus

1. State of Bihar through Commissioner of State Tax, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Additional Commissioner of State Tax (Appeal), Bhagalpur Division, Bhagalpur.
3. Asst. Commissioner of State Tax, Jamui Circle, Jamui.
4. Executive Engineer, Minor Irrigation Division, Jamui, VIP Colony, Sirchand Nawada, Dist-Jamui, Bihar-811307.
5. Executive Engineer, Public Health Engineering, PHED Campus, Sirchand Nawada Road, Near KKM College, Dist-Jamui, Bihar-811307.
6. Executive Engineer RWD Works Division, Jhajha, Near Jhajha Public School, Nagar Panchayat Road, Pipradih, Jhajha, Dist-Jamui, Bihar-811308.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Manish Kumar, 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 ORDER

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

2 04-04-2023 The instant writ petition has been filed under Article 226 of the Constitution of India seeking following reliefs:-

> *"i) The order dated 08.12.2022 (as contained in Annexure -7) passed by the respondent No.- 2 in Appeal Case No. (ARN) AD100222007558N for the period 01.04.2020 to 31.03.2021 without grant of adequate opportunity of being heard be quashed.*
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> *ii) The Ex parte order dated 15.11.2021 (as contained in Annexure-3) in form of DRC-07*

passed by the Respondent No-3 demanding tax, interest and penalty amounting to Rs. 10,76,162.00 under the CGST/BGST Act -2017 for the period April 2020 to March 2021 in Form GST DRC-07 without providing sufficient opportunity in violation of principles of natural justice be stayed during the pendency of this writ petition.

iii) For issuance of a direction upon the Respondents to immediately revoke/withdraw the order of attachment of bank account of the petitioner.

iv) For holding and declaring that the order of attachment of bank account of the petitioner issued by the Respondent assessing authority in the month of December 2021 is thoroughly illegal, arbitrary and violative of the principles of natural justice as the petitioner was never issued any prior notice about such coercive and extreme action being taken for the purpose of recovery of such assessed demand;

v) For issuing a writ of certiorari or any other appropriate writ quashing/ setting aside adjudication order dated 15.11.2021 passed by the Respondent No. 3 on the ground of violation of natural justice and remand the matter for fresh adjudication after giving the petitioner the opportunity to make appropriate submissions.

vi) for granting any other relief (s) to which the petitioner is otherwise found entitled to in accordance with law."

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)

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