IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2644 of 2023

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M/S Energo Construction Pvt. Ltd. (previously known as M/S Energo Construction Ltd.) Having its Registered Office at 51, Okhla Industrial Area, Phase III, New Delhi (India) - 110020 through its Vice President (Commercial), Sri Lovkesh Kumar Chauhan, aged about 54 years, s/o late Sri Kishan Lal Chauhan, R/o Plot no. 4, Kaveri Co-operative GHS Apartment, Dwarka Sector - 6, P.S. - Dwarka West Delhi, Delhi - 110075.

... ... Petitioner

Versus

1. State of Bihar through its Commissioner Cum Secretary, Commercial Tax Department, Govt. of Bihar.
2. The Additional Commissioner of State Tax (Appeal), Darbhanga, Circle, Darbhanga.
3. The Joint Commissioner of State Tax, Begusarai, Circle, Begusarai.
4. The Assistant Commissioner of State Tax, Begusarai, Circle, Begusarai.

... ... Respondents

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Appearance :

For the Petitioner	:	Mr. Tuhin Shankar, Adv.
For the Respondents	:	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)

3 02-03-2023 The instant writ petition has been filed under Article 226 of the Constitution of India seeking following reliefs:-

> *"a. To quash the order dated 24.01.2022 passed by Respondent no 3 by which the Petitioner's GST Registration bearing GST no. 10AABCE9865D1ZV was cancelled and the appellate order for revocation dated 11.10.22.*
>
> *b. To further quash order dated 2.09.2022 passed under section 76 (3) of Bihar Goods and Service Tax, 2017 by Respondent no 4 for the period January 2022- March 2022 by*

which Tax, interest @18% per annum and penalty at 100% totaling to Rs. 36,63,663.00 has been imposed on the Petitioner.

c. To further quash order dated 2.09.2022 passed under section 76 (3) of Bihar Goods and Service Tax, 2017 by Respondent no 4 for the period April 2022- June 2022 by which Tax, interest @18% per annum and penalty at 100% totaling to Rs.52,28,428.00 has been imposed on the Petitioner.

d. To quash the two orders dated 31.1.23 passed by the Respondent no 2 in Appeals no. AD100922007106Q & AD100922007087I preferred by the Petitioner by which the two orders dated 02.09.22 u/s 76(3) of Bihar GST Act, 2017 for period Jan 2022- March 2022 and April 2022- June 2022 respectively has been confirmed and Petitioner Appeal stood rejected.

e. To quash the letter dated 2.2.2023 contained in Process no 168 by which Petitioner has been directed to deposit a total tax liability including 18% interest along with 100% penalty totaling to Rs. 84,59,742.00 with regard to the tax liability of both the aforesaid periods failing which to recover the said amount through section 79 of Bihar GST Act, 2017.

f. To pass such other order/orders/declaration for doing substantial justice on facts and circumstances of case as deem fit and proper."

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)

(Madhuresh Prasad, J)

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