IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4200 of 2023

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Madan Kumar, S/o Rajdeo Roy, Proprietor/ Civil Contractor having its place of business at Ladugarh, Janaki Nagar, Purnea, Bihar- 854202, resident of Ladugarh, Janki Nagar, P.S.- Janki Nagar, District- Purnea, Bihar- 854202.

... ... 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 (Appeal), Purnea Division, Bihar.
3. The Deputy Commissioner of State Taxes (Appeal), Purnea Division, Purnea, Bihar.
4. The Joint Commissioner of State Taxes, Purnea Circle, Bihar.
5. Chandan Traders, Proprietorship owned by Chandan Kumar Singh, GSTIN No.- 10CFMPS1905P1Z5, Rameshwar Market, Banmankhi, Purnea- 854202 (Bihar).

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Chandra Shekhar Anand, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC 11

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

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-04-2023

The writ petition is filed against Annexure-5, the assessment order made against the writ petitioner, who is a civil contractor and who has a registration with the Purnea Circle of the Bihar Goods and Services Tax Department. The petitioner's grievance seems to be the denial of input tax credit for the reasons of the petitioner's supplier having not uploaded the required forms within time. The petitioner in the writ petition has elaborately dealt with the computation of input tax credit; which ought to have been agitated in a properly instituted appeal and not before this Court under Article 226 of the Constitution of India.

The contours of the jurisdiction under Article 226 of the Constitution of India to interfere with appellable orders have been 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 of principles of natural justice or 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 Annexure-5 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 to challenge an assessment order specially 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 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.

As such, writ petition stands dismissed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	21.04.2023
Transmission Date	