

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3733 of 2023

PCPL and RK- JV a Joint Venture having its Local Place of Business at B-13, 4, Twin Tower South Gandhi Maidan, Patna. through its authorized signatory namely Brajesh Kumar Male aged about 39 Years Son of Umesh Thakur resident of Village-Hararidularpur, Harari Dularpur, H-Dularpur, Sitamarhi, P.S.-Sursand, District-Sitamarhi, Bihar-843331.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secreary Cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeals), Patna West Division, Patna.
3. The Assistant Commissioner of State Taxes, Gandhi Maidan Circle, Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate
For the Respondent/s : Mr. Vivek Prasad, GP-7

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

2 03-04-2023 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 ex parte order passed by the respondent number 2 in exercise of power under section 73 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) and also for quashing of the summary of order issued in form GST DRC-07 dated 07.02.2021 in pursuance of such order;

b) For further issuance of a writ in the nature of certiorari for quashing of the appellate order dated 28.01.2023 issued vide memo number



166 by the respondent number 2 whereby the appeal preferred by the petitioner against the order dated 07.02.2021 passed by the respondent number 3 has been rejected without any application of mind to the various issues of facts and law raised by the petitioner;

- c) For further restraining the respondents from taking any coercive action against the petitioner for recovery of the amount of tax, interest and penalty in terms of the impugned ex parte order of the respondent number 3 affirmed by the respondent number 2 in appeal as there is no statutory remedy with the petitioner in absence of GST tribunal in the state of Bihar for the present;*
- d) For further holding and a declaration that mere absence of auto populated GSTR-2A resulting in mismatch with the return filed by the petitioner in form GSTR-3B cannot deprive the petitioner from the benefit of input tax credit;*
- e) 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.

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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