IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3771 of 2023

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M/S Das & Das Drug Distributors (a Sole Proprietorship Firm), having its registered office at Kishori Complex, Post Matam Road, Line Bazar, Purnea, Bihar through its Sole Proprietor Ravindra Nath Das aged about 43 years S/o Ramesh Chandra Das.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue, having its Office at Room No. 46, North Block, P.O. and P.S. North Block, New Delhi- 110001.
2. The Chief Commissioner, CGST and CX, Office at -C.R Building, 1st Floor, Bir Chand Patel Path, Patna, Bihar.
3. The State of Bihar, through Commissioner BGST, New Secretariat, Patna.
4. Joint Commissioner of State Tax, Purnea Division, Purnea, Bihar.
5. Deputy Commissioner of State Tax, Purnea Circle, Purnea.
6. Assistant Commissioner of State Tax, Purnea Circle, Purnea.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Anurag Saurav, Advocate
Mr. Abhinav Alok, Advocate
Mr. Priyajeet Pandey, Advocate

For the Respondent/s : Dr. K.N. Singh, Additional Solicitor General
Mr. Vikash Kumar, S.C. 11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-04-2023

The writ petitioner challenges Annexure- 5 and 6 orders. Annexure- 5 is an assessment order passed against the petitioner for the financial year 2018-19 and Annexure- 6, a demand issued under Section 73 of the Bihar Goods and Service Tax Act, 2017 ("BGST Act" hereafter). The petitioner admits that there was a wrong amount claimed as Input Tax Credit which, however, was rectified as per Annexure- 2 and 3. However, despite the said rectification having been made, there is a demand raised by the assessment order, which also was an *ex parte* order.

We see from the assessment order that notice was issued to the assessee after which by reason of default of the assessee in appearing before the Assessing Officer, the matter was decided *ex parte*. The order itself is dated 30.01.2021 and it was incumbent upon the assessee to file an appeal u/s 107 of the BGST Act, if he was aggrieved with the assessment order passed. Section 107 provides a period of three months within which an appeal has to be filed and a further period of one month for making a delayed appeal, which delay could be condoned by the Appellate Authority. The Hon'ble Supreme Court considering the Covid situation has saved the limitation by various orders between 15.03.2020 and 28.02.2022. Even after that or till date no appeal was filed against the order. The writ petition is filed only when the tax authority sought for recovery from the bankers of the petitioner, as is evident from Annexure- 7. We find no reason to exercise our extraordinary jurisdiction under Article 226, especially when the assessee has failed to invoke the appellate remedy within time and this Court cannot be looking at the order on merits invoking its discretionary power under Article 226.

The writ petition hence would stand dismissed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

P.K.P./Anushka

AFR/NAFR	
CAV DATE	
Uploading Date	19.04.2023
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