IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3863 of 2023

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M/S Eta General Private Limited, Laxmikant Niketan Parisar, No. 206, 207, Ambition Business Center, Jamal Road, Patna, Bihar - 800001 through its Executive -Accountant and Commercial and authorized signatory Narendar Kumar (Male) aged about 51 Years son of Rameshwar Prasad, resident of Tiril, Near Tiril Talab, Kokar, P.S. Ranchi Sadar, District - Ranchi (Jharkhand).

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner State Taxes-cum-Principal Secretary, Commercial Taxes Department, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. The Commissioner State Taxes-cum-Principal Secretary, Commercial Taxes Department, Bihar, Patna having its Office at Vikas Bhawan, Patna.
3. The Joint Commissioner State Tax, Gandhi Maidan Circle, Patna West, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Shive Kumar, 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 : 11-04-2023

The petitioner in the above writ petition challenges the demand notice dated 03.01.2023, pursuant to the assessment order passed on 25.01.2022 respectively produced in the writ petition as Annexure-3 and 4. The petitioner assessee does not have a case that the assessment order was not served on him as required under law. The petitioner also had a statutory remedy by way of an appeal under Section 107 (4) of the Bihar

Goods and Services Tax Act. The aforesaid provision requires an appeal to be filed within a period of three months and upon delay, to be filed within a further period of one month; which could also be considered if there is satisfactory explanation for the delay occasioned. The petitioner has not availed the remedy and at this point of time, cannot seek to avail the appellate remedy for reason of the limitation period having expired long prior. It is also trite that when the statute provides for a period of limitation and also requires a delayed appeal to be filed within a specified period, the appellate authority does not have the power to condone the delay occasioned in excess of the period specifically provided under the statute.

2. The present writ petition is filed on the demand notice being issued, which is not permissible when there was an alternate efficacious remedy, which was not availed by the petitioner for reason of his own default. There are specific contours for invocation of the extra ordinary remedy under Article 226 of the Constitution of India, as has been delineated in the **State of H.P & Ors. v. Gujarat Ambuja Cement Limited & Anr.; (2005) 6 SCC 499**.

3. We find no such ground existing and in any event the attempt of the petitioner to bypass the appellate

remedy, which he chose to not avail of, cannot be countenanced.

We, hence, dismiss the writ petition *in limine*.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	17.04.2023
Transmission Date	