IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3974 of 2023

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Manoj Kumar Singh, Son of Saket Prasad Singh, Resident of Pratappur Tola, Panchayat Uttari Maranchi, Village - Maranchi, P.O. and P.S.- Maranchi, District – Begusarai.

... ... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary-Cum-commissioner Department of State Taxes, Government of Bihar, Patna.
2. The Principal Secretary-Cum-Commissioner Department of State Taxes, Government of Bihar, Patna.
3. The Additional Commissioner of State Taxes, Patna.
4. The Joint Commissioner of State Tax, Badh Circle, Badh.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Alok Ranjan, Advocate
For the Respondent/s : Mr.Vivek Prasad, GP-7

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

Date : 13-04-2023

The writ petition challenges the appellate order which dismissed the appeal for reason of the petitioner having not complied with Rule 108(3) of the Bihar Goods and Services Tax Rules, 2017. Section 107(4) of the Bihar Goods and Services Tax Act, 2017 requires an appeal to be filed within three months and a further time of one month is provided, within which a delayed appeal can also be filed, which can be entertained on the appellate authority being satisfied about the reason for delay. In the Rules, it is also provided that after the filing of appeal, within seven days, a certified copy should be filed before the appellate authority. The appeal herein was dismissed on the ground that certified copy was not filed till the dismissal was made.

The dismissal was made by the impugned order dated 19.11.2022, produced at Annexure-3. We were first concerned with whether there was a speaking order as distinct from Annexure-3, which only showed the details of the appeal and the reason for rejection in a printed form.

The learned State counsel produced before us an order dated 15.11.2022 in which the reasoning has been very clearly stated.

It was also submitted by the learned State Counsel that the assessment order itself was dated 10.01.2021 and in such circumstances, the appeal was grossly delayed. Insofar as the limitation period is concerned, the Hon'ble Supreme Court vide judgment dated 10.01.2022 passed in **Miscellaneous Application No. 21 of 2022** in **Suo Motu Writ Petition (C) No. 3 of 2020**, saved the limitation between 15.03.2020 and 28.02.2022, which was also on account of the pandemic situation. The order passed herein which is dated 10.01.2021, was within the said period, saved by the Hon'ble Supreme Court.

In such circumstances, if time is computed from 28.02.2022, definitely the petitioner is entitled to file an appeal within three months from thereat, which has been done since the appeal is filed on 10.03.2022. The certified copy was also applied on 08.03.2022 and received on 09.03.2022, as we see from Annexure-1, overleaf. The learned counsel would submit that though it was entrusted to the authorised representative, it was not submitted in time.

In any way, the fact remains that there is no GST Tribunal constituted as of now, wherein an appeal could have been maintained by the petitioner; we are of the opinion that the appellate authority could be directed to consider the appeal afresh. We set aside the appellate order dated 15.11.2022, which we annexe to the above writ petition as Annexure-C *suo motu*.

Annexure-C hence stands set aside and the petitioner is directed to file the certified copy within a period of three weeks from receipt of this judgment, upon which the appeal shall be restored and heard on merits. The Registry of this Court shall expeditiously return the certified copy of the order of the assessing authority, to the learned counsel for the petitioner.

The writ petition stands dismissed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	18.04.2023
Transmission Date	