

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2683 of 2023

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Ram Krishna Mission Ashrama a Society registered Under the Societies Registration Act, having its R.K. Avenue, Nala Road, Patna, Bihar-80003, through its Secretary, Swami Sarvaidyanand, aged about 64 Years (Male), Son of Swami Bhuteshanand ji, resident at House No. 795, Ward No.5, Ramkrishna Mission Vidhapith Deoghar, B Deoghar, P.S.-Deoghar, District-Deoghar, Jharkhand-814112.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna,
2. The Assistant Commissioner of State Taxes, Kadamkuan Circle, Patna (East), Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Suraj Samdarshi, Advocate
For the Respondent/s : Mr.Vikash Kumar (SC 11)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-07-2023

The writ petition is filed challenging the assessment orders for the years 2018-2019 and 2019-2020 both dated 13.02.2021. Copy of the orders along with its summary are produced as Annexures-2 and 3 in the writ petition. The petitioner claims that the petitioner had no information about the said orders and even the notice was not



served properly. The petitioner's contention is that both the assessment orders are *ex parte* and the orders themselves were brought to the notice of the petitioner only when notice of attachment was issued to the bank in which the petitioner maintains an account. The petitioner's contention is only that the petitioner was not issued a physical notice; which is not the requirement under Section-169 of the Bihar Goods and Services Tax Act, 2017. It is true that Section 169 includes many modes of notice upon registered assesseees like service through speed post, courier, messenger or mobile phone etc. However, it is admitted that the notices prior to assessment and the orders were uploaded in the portal which is also a proper mode of service. The petitioner's contention is also that in the Covid period, the electronic mode should not have been chosen. We find the said contention to be very intriguing since it was during the Covid period that the electronic mode became more common place and it was also expedient that authorities and assesseees use the digital mode, avoiding physical contact.

2. The contention raised is also of input tax having not been accorded which was again due to the failure of petitioner to make a claim in accordance with the



provisions of the Act.

3. The assessment orders challenged herein were appealable under Section-107 of the Bihar Goods and Services Tax Act.

4. The Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020**, In Re: Cognizance For Extension of Limitation due to the pandemic situation, limitation was saved between 15.03.2020 till 28.02.2022. It was also directed that an appeal could be filed within ninety days from 01.03.2022. Hence, an appeal could have been filed on or before 29.05.2022, which provision was not availed by the petitioner herein. The Hon'ble Supreme Court also declared that if a longer period than 90 days is provided in a Statute, then that longer period will apply. In the BGST Act, u/s 107(4) there is a provision for condonation of delay, if the appeal is filed delayed, within one month of expiry of limitation. Even if that be deemed to be appealable then the appeal ought to have been filed by 28.06.2022. Here, the petitioner has not filed an appeal.

5. We also notice the contours of the jurisdiction under Article 226 of the Constitution of India to interfere with appellable orders 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 the impugned order.

6. Having not availed the statutory remedies available, the petitioner cannot seek to approach this Court



under Article 226 of the Constitution of India to challenge an assessment order especially 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.

7. It is trite law 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.

8. 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. We also find that there is no jurisdictional error, violation of principles of natural justice or abuse of process of Court averred or argued by the petitioner in the above writ petition. The petitioner seeks to challenge the demand on the ground of no physical copy of the notice and orders having not been served; while it is admitted that the same was sent on e-mail and auto-populated. There is no other valid contention raised. The gross



delay also stands against the petitioner.

9. As such, the writ petition would stand dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	11.07.2023
Transmission Date	

