IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3499 of 2023

==

M/S Amit Kumar Yadav (A Sole Proprietor ship Firm) having its registered office- Ashram Tola, Barinagar, Guru Bazar, District- Katihar Bihar, through its Sole Proprietor Mr. Amit Kumar Yadav, aged about 52 years, S/o Mr. Mishri Prasad Yadav.

... ... 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, Katihar Circle, District- Katihar, Bihar.
5. Deputy Commissioner of State Tax, Katihar Circle, District- Katihar, Bihar.
6. Assistant Commissioner of State Tax, Katihar Circle, Katihar.
7. Additional Commissioner (Appeal), Purnea Division, Purnea.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mr. Anurag Saurav, Advocate
For the Respondent/s	:	Mr. Dr. K.N. Singh, ASG

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

2 04-04-2023 The instant writ petition has been filed under Article 226 of the Constitution of India seeking following reliefs:-

> *"(i) For issuance of appropriate writ/order/direction for setting aside order bearing Memo no. 785 dated 24.09.2021 passed by Additional Commissioner (Appeal), Purnea Division, Purnea in Appeal Case bearing Appeal Case No. ARN No. AD1004210013353 for the financial year 2019-20 whereby and where under the Appellate Authority upheld the order dated 15.01.2021 passed by Respondent no.6 and directed to issue APL-IV to the petitioner.*

WEB COPY

(ii) For Issuance of an appropriate writ/ order/ direction for setting aside Ex parte order dated 14-01-2021 passed by respondent no.6 i.e Assistant Commissioner of State Tax jurisdiction, Katihar Circle, Katihar, Bihar, Whereby and Where under respondent no.6 has imposed tax amount of Rs. 1,12,876/- under CGST and SGST (along with interest and penalty) i.e a total amount of Rs.2,47,502/- under section 74 of BGST Act and the said proceeding has been initiated by the respondent authorities on the ground that an amount of Rs, 16,12,524.76/- were reflecting in GSTR7 of Government Department which has been paid to the petitioner against work done and the said amount was not mentioned in the GSTR3B Return of the petitioner and petitioner had suppressed an amount of Rs. 16,12,524.76/- as Taxable Turn Over and an amount of Rs. 56,438/ as Tax, Rs. 56,438/- as Penalty and Rs. 10,874/- as Interest has been imposed under CGST and BGST Act and the said order has been passed without considering the GSTR3B Return of March 2019-2020, where petitioner has declared and mentioned the amount as Taxable Turnover of Rs. 16,12,524.76/- and without considering the return of the petitioner, the order has been passed..

(iii) For Issuance of an appropriate writ/ order/ direction for setting aside Ex parte order bearing Reference No.ZD100121013480J dated 15.01.2021 passed by respondent no.6 i.e Assistant Commissioner of State Tax jurisdiction, Katihar Circle, Katihar, Bihar, whereby and where under respondent no.6 has imposed tax amount of Rs 1,12,876/- under CGST and SGST (along with interest and penalty) i.e a total amount of Rs. 2,47,502/- under section 74 of BGST Act.

(iv) For setting aside the demand notice issued in the Form of DRC 07 Dated: 15.01.2021.

(v) For staying the letter bearing letter no. 20 dated:31.01.2023 issued by Respondent no.6 , whereby and where under a direction was issued to different Department to make the

WEB COPY

payment of GST amount against the pending dues amount of the petitioner.

(vi) For restraining the respondent authority for issuance of DRC 13 for recovery of tax amount through the Bank account attachment.

(vii) For issuance of an appropriate Writ(s), order(S), and/or direction(s), as Your Lordships may deem fit and proper in the facts and circumstances of this case in the interest of justice."

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

WEB COPY

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

WEB COPY

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)

shashank/-

U			

WEB COPY