IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4318 of 2023

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M/s Binod Kumar Yadav through its Proprietor, Binod Kumar Yadav S/o Deonath Prasad Yadav, aged 54 years, resident of Babu Bazar, Road no. - 10, Gardanibad, P.S. - Gardanibad, District - Patna, Pin 800002.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of State Tax, Bihar, New Secretariat, Patna.
2. The Commissioner of State Tax, Bihar, New Secretariat, Patna.
3. The Joint Commissioner of State Tax, Patna South Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Alok 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 : 17-04-2023

The petitioner in the above writ petition challenged the assessment order passed on 20.01.2021 against which, despite the existence of an appellate remedy, no appeal was filed.

The petitioner’s contention is that it was an e*x-parte* order passed without notice to him. In fact, the specific averment of the petitioner is that he received information from his accountant about the *ex-parte* order passed against him for the assessment year and when he inquired with the Department, he was told that the said order was passed on 20.01.2021. The Department asserted that notices were sent on the GST Portal which, however, the petitioner failed to find despite verification. Again when the petitioner approached the Department, he was asked to verify 'additional notices and orders' where he found the show-cause notice having been issued on 11.12.2020 and an order finalized on 20.01.2021.

Obviously, the petitioner failed to verify the portal where notices are uploaded and finalized orders too are uploaded. The petitioner himself has produced a show-cause notice and the order respectively, as Annexure-2 and Annexure-3.

As per Section 107(4) of the Bihar Goods and Services Tax Act, 2017, the assessee has a time of three months to file an appeal before the first Appellate Authority. A further period of one month is also stipulated when an appeal can be filed delayed, with satisfactory explanation. It is trite law that when the Statute has stipulated a period for delay condonation, Section 5 of the Limitation Act has no application and there could be no condonation of further delay granted by the statutory authority.

It is also to be noticed that 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, due to the pandemic situation. A further time of three months was also granted to initiate original proceedings or appeals. Obviously, the petitioner had not taken the said remedy within the period stipulated in the Statute or by the Hon'ble Supreme Court.

The petitioner having failed to avail the statutory remedy cannot invoke Article 226 of the Constitution of India to raise a challenge against the assessment order passed. For the aforesaid reasons, the writ petition is found to be not maintainable and is dismissed in *limine*.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

aditya/-

AFR/NAFR	
CAV DATE	
Uploading Date	20.04.2023.
Transmission Date	