IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4620 of 2023

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Bhaskar Thakur, Son of Ramnarayan Thakur, Resident of Ashram Chowk Mohalla, Ward No. 10, Police Station Araria, District Araria Pin Code 85431

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance (Department of Revenue) Government of India, New Delhi.
2. The Under Secretary, Ministry of Finance (Department of Revenue) Government of India, New Delhi.
3. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
4. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
5. The Joint Commissioner State Tax (I.C.S.T.), Purnia Circle Purnia, Pin Code 854301
6. The Assistant Commissioner State3 Tax, Purnia Circle Purnia.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Binod Kumar Yadav, Advocate
For the Respondent/s	:	Dr. K.N. Singh, Additional Solicitor General
		Mr. Vikash Kumar, S.C. 11

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

Date : 21-04-2023

The above writ petition challenges the demand raised by the CGST authorities as per Annexure-2 and the appellate order in the appeal filed against the assessment order, which has also been rejected by Annexure-3 order dated 20.01.2023. Annexure-2 is a demand notice dated 02.03.2020, for the period October, 2018 to March, 2019. Obviously, the date of assessment order would be prior, which order has not been produced herein. In the appellate order at Annexure-3 it has been noticed that the appeal was filed on 15.01.2023 with a delay of 34 months. It was also observed that there was no certified copy of the order produced. Hence, the appeal stood dismissed for the reason of delay.

The appellant in the writ petition has claimed that he is a contractor who had obtained contracts even prior to 01.07.2017, on which date Goods and Services Tax Act, 2017 came into force. The appellant asserts that there was a writ petition filed as CWJC No. 1452 of 2019 in which an order was passed on 05.07.2019; which, however, has not been produced with the writ petition and we did not have the benefit of perusing the said order. The contention raised in the writ petition seems to be the question of refund of CGST which is levied even for contracts, agreements of which were executed prior to the date of coming into force of the CGST Act, but the actual work having been carried out subsequent to the date of CGST Act. The grievance seems to be the awarders' unwillingness to refund the higher tax leviable under the CGST Act. Despite raising such a contention, there is nothing produced in the writ petition to substantiate the claim of a contract having been executed prior to 01.07.2017 and the work carried out after that date. As we noticed, even the assessment order is not produced herein.

The appeal was dismissed for reason of gross delay. Section 107(4) of the Bihar Goods and Services Tax Act, 2017 ("BGST Act" hereafter) permits an appeal to be filed within three months and also apply for delay condonation with satisfactory reasons within a further period of one month. The Appellate Authority also took into account the saving of limitation granted by the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020, In Re: Cognizance For Extension of Limitation. Therein, 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 appeal is said to have been filed only on 15.01.2023, after more than seven months from the date on which even the limitation period, as stipulated by the Hon'ble Supreme Court, expired. In the above circumstances, we find no reason to invoke the extraordinary jurisdiction under Article 226, especially since it is not a measure to be employed where there are alternate remedies available and the assessee has not been diligent in availing such alternate remedies within the stipulated time.

The writ petition hence would stand dismissed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

P.K.P./Anushka

AFR/NAFR	
CAV DATE	
Uploading Date	27.04.2023
Transmission Date	