IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5272 of 2023

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Vijay Shree Press through its Proprietor Rajiv Kumar, Son of Rajendra Prasad Bhagat, male, aged about 47 years, resident of Panchbati Chowk, Gangjala, Ward No.- 18, P.S. and P.O. and Dist.- Saharsha.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of Commercial Taxes, Govt. of Bihar, Patna.
2. The Additional Commissioner of State Taxes, Saharsa Circle, Saharsa.
3. The Assistant Commissioner of State Taxes, Saharsa Circle, Saharsa.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shailesh Anand, Advocate
For the Respondent/s	:	Mr. Vikash Kumar (SC11)

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

Date : 26-07-2023

1. The short facts coming forth is that the appeal filed by the petitioner against an assessment order was rejected for reason of the appeal being delayed. The assessment order was dated 21.01.2021 and the appeal was filed on 09.03.2022.

2. The learned Government Advocate has produced before us an order of the appellate authority which also indicates that the appeal was dismissed for reason of there being no certified copy of the order impugned, produced within seven days, as has been provided in Rule 108 of the Bihar Goods and Services Tax Rules.

3. The learned Government Advocate also points out

that there is sufficient mitigation provided in the Rules insofar as appellant-assessee is permitted to produce the self attested copy, if at all, the assessment order is not on the portal, as contended by the learned counsel for the petitioner. Learned counsel for the petitioner, however, points out that the appeal itself stood dismissed prior to the amendment to Rule 108 which came only on 26.12.2022. The appellate order is dated 11.11.2022.

4. As of now, the petitioner has obtained the certified copy of the order and it is also clear that as of now, there is no requirement for production of a certified copy of the order.

5. Insofar as the limitation is concerned, 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 saved the limitation 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. 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.

6. Hence, an appeal could have been filed within three months from 28.02.2022. The appeal was filed on 09.03.2022 within the limitation as provided by the Hon'ble Supreme Court.

7. In such circumstances, we set aside the order in appeal dated 11.11.2022 and remand the matter to the appellate authority for fresh consideration. The petitioner would be entitled to seek for stay of recovery before the appellate authority also. The petitioner will appear before the appellate authority on or before 16.08.2023 and the recovery shall be stayed up to 31.08.2023 and later it shall be subject to the orders passed by the appellate authority.

8. The writ petition stands allowed with the aforesaid observations and directions.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	31.07.2023
Transmission Date	