IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4602 of 2023

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M/s Indus Towers Limited a Company incorporated Under the Companies Act, 1956 having its Office at 2nd and 3rd Floor, Alankar Business Centre, East Boring Canal Road, Patna, through its authorized representative/signatory Sanjay Wadhwa, aged about 49 Years (M), Son of Late Lakshman Das Wadhwa, Resident of 183, Vedanta Apartment, Plot No.6C, Sector 23 Dwarka, PS- Dwarka Sector-23, New Delhi Pin-110077.

... ... Petitioner/s

Versus

1. The Union of India through The Secretary, Department of Revenue, Ministry of Finance, New Delhi.
2. The Secretary, Department of Revenue, Ministry of Finance, Government of India, New Delhi.
3. The Central Board of Indirect Taxes & Customs, Department of Revenue, Ministry of Finance, Government of India, New Delhi.
4. The State of Bihar through the Commissioner-Cum-Secretrary, Commercial Taxes, Govt of Bihar, Patna.
5. The Commissioner of State Tax, Viksah Bhawan, Patna.
6. The Additional Commissioner State Taxes (Appeal), Central Division, Patna, Bihar.
7. Assistant Commissioner, State Tax, Patliputra Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Brisketu Sharan Pandey, Advocate
For the Union of India	:	Dr. K.N.Singh, ASG
		Mr. Anshuman Singh, Advocate
For the State	:	Mr. Vivek Prasad, G.P. 7

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

Date : 19-04-2023

The instant writ petition has been filed under Article 226 of the Constitution of India seeking multifarious reliefs.

The petitioner essentially is desirous of availing statutory remedy of appeal against the impugned order dated 07.03.2023 passed by the Additional Commissioner, State Tax (Appeal), Central Division, Patna in Appeal Case No. AD100522002178S (Annexure-P/1) 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 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*.
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> (ii) The statutory relief of stay, on deposit of the statutory 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 petition stands disposed of.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

P.K.P./Anushka

AFR/NAFR	
CAV DATE	
Uploading Date	20.04.2023
Transmission Date	