IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6132 of 2023

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M/s. Mithilesh Kumar Singh having its office at Ward No.- 12, New Area Bay Pass Chowk, Aurangabad, Aurangabad, Bihar, 824101 through its Proprietor, Mithilesh Kumar Singh, aged 56 years (M), Son of Rameshwar Singh, Residing at Ward No. 12, New Area Bay Pass Chowk, Aurangabad, Aurangabad, Bihar, 824101.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner Cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
2. The Commissioner Cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
3. The Additional Commissioner State Tax (Appeals), Magadh Division, Gaya, Bihar.
4. The Joint Commissioner of State Tax, Aurangabad Circle, Magadh, Bihar.
5. The Assistant Commissioner of State Tax, Aurangabad Circle, Magadh, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ajay Pathak

For the Respondent/s : Mr.Vivek Prasad (GP 7)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 09-05-2023

The writ petition is filed against the appellate order dated 08.02.2023, Annexure-4 which rejected the appeal on the ground of delay. The appeal was from Annexure-2 order of assessment passed on 09.10.2021. The appellate order specifically noticed Section 107 of the Bihar Goods and Services Tax Act, 2017 (“BGST Act” hereafter) which 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 26.01.2023, after about seven months and twenty five days 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.

2. The writ petition hence would stand dismissed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

M.E.H/uttam/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A