IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 4629 of 2023

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M/s Krishi Bhawan through proprietor Shobha Kant Prasad, Male, aged about 58 years, Son of Ram Karan Prasad, Resident of Madhaipur, Ward 13, Vidyapatinagar, Madhaipur, Samastipur, Bihar-848503. ... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of State Taxes, New Secretariat, Patna.
2. Assistant Commissioner State Taxes, Darbhanga Circle, Darbhanga.
3. Additional Commissioner (Appeal) State Taxes, Darbhanga Circle, Darbhanga.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Ms. Archana Sinha @ Archana Shahi, Advocate
For the Respondent/s : Mr. Vikash Kumar, SC 11

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

Date : 26-06-2023

The petitioner is concerned with the dismissal of an appeal as per Annexure-2, which was for the reason of the appeal being delayed beyond the time provided under Section 107 (4) of the Bihar Goods and Services Tax Act,2017 (in brevity 'BGST Act'). We have to first notice the facts or rather the dates on which the various orders were passed. The assessment order was passed on 18.02.2021, the appeal was filed on 06.02.2023. The appeal stood dismissed by Annexure-2 dated 06.03.2023, on the ground that the appeal is filed beyond the period provided for filing it even with a delay condonation application i.e., four months from the date of the order.

2. The learned counsel appearing for the petitioner

submits that even at the time of the assessment order, there was violation of principles of natural justice insofar as the assessee being offered only one opportunity to file objection and appear for hearing. It is also submitted that such a ground was taken before the first Appellate Authority, which was not considered only by reason of delay. The learned counsel also places before us various decisions of the various High Courts to contend that even when delay is caused beyond the period that is provided under the statute, there should be a permission granted to file an appeal.

3. We see that at least two of the orders produced before us are of learned single Judges and even the Division Bench orders of the other High Courts have only a persuasive effect on us and it cannot be considered to be a binding precedent. We, all the same, looked at the various orders on the persuasion of the learned counsel. In one of those, in W.P. No.14111 of 2023, titled as **M/s PRM Constructions Vs. The Assistant Commissioner of GST & Central Excise & Ors.,** dated 01.06.2023, a learned Single Judge of the Madras High Court had allowed the filing of the statutory appeal under the Finance Act, 1994, even beyond the period of statutory limitation. Therein, the learned Senior Panel Counsel appearing

for the Department did not object to the request. It was hence, the said order was passed by the learned Single Judge. The very same learned Single Judge's judgment in connected writ petitions, W.P. Nos. 8968 of 2020 and others, titled as **EPMS Property Services Private Limited Vs. The State Tax Officer & Anr.,** dated 05.04.2023, was also produced before us. Therein, obviously there was an error with respect to the date of receipt of order, which was pointed out to the learned Single Judge. If the error was rectified the appeals were found to have been filed within the time provided under the statute i.e. within four months. The said decision is not applicable to the present case since, obviously, herein, the appeal has been filed delayed.

4. A Division Bench Judgment of the High Court of Orissa at Cuttack in W.P(C) No. 10587 of 2023, titled as **M/s. Laxman Barik Vs. Joint Commissioner of State Tax (Appeal) Balasore and Ors**., dated 18.04.2023 is also placed before us. Therein, though the appeal was dismissed for delay, considering the fact that there is a further appeal provided under the GST Act to the Tribunal which was not constituted, it was directed that recovery should be stayed on payment of 20% and the petitioner permitted to avail the remedy before the GST Tribunal.

5. With all the respect at our command, we are unable to agree with the said Division Bench judgment especially, in the context of the appeal having been dismissed on delay. When there is dismissal on delay there could be no consideration on merits by the second Appellate Authority. We have also been dismissing such writ petitions, where there was delayed filing of appeals, without permitting them to wait for the constitution of the GST Tribunal. A second appeal on merits to the Tribunal would not be possible since the first appeal was dismissed on grounds of delay; which dismissal is unassailable by the rigour of the statutory provision.

6. In the present case, we see that the appeal was filed delayed by around six months. 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 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 applicable then the appeal ought to have been filed by 28.06.2022. The appeal is filed only on 06.02.2023 after 223 days from the date on which even the limitation period as stipulated by the Hon'ble Supreme Court, expired.

7. 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.

8. The writ petition hence would stand dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Prakash/Avinash

AFR/NAFR	
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