IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6373 of 2023

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M/S Mithilesh Kumar Singh having its office at Ward No 12, New Area Bay Pass Chowk, Aurangabad, Bihar, 824101 through Proprietor, Mithilesh Kumar Singh, aged 56 years (M), Son of Rameshwar Singh, Residing at Ward No 12, New Area Bay Pass Chowk, 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. Magadh Division, Gaya, Bihar.
4. The Joint Commissioner State Tax Aurangabad Curcle, Magadh Division, Bihar.
5. The Assistant Commissioner of State Tax, Aurangabad Circle, Magadh Division, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sriram Krishna, Advocate Mr.Ajay Pathak, Advocate Ms. Sangita Kumar, Advocate
For the Respondent/s	:	Mr.P.K. Shahi , AG Mr. Bipin Kumar, AC to AG

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

Date : 01-05-2023

The petitioner challenges the appellate order which dismissed the appeal for non-prosecution. The appeal was filed in time and the appellate authority merely for the reason of the absence of the petitioner or the authorised representative rejected the appeal.

We have already held in **Purushottam Stores vs. The State of Bihar & Ors; CWJC No. 4349 of 2023** decided on 25.04.2023; looking at the provisions of the Bihar Goods and Services Tax Act especially sub-sections (8), (9), (10), (11) and (12) of Section 107 of the Act, that the Appellate Authority has a duty and an obligation under the statute to look into the merits of the matter and also examine the grounds raised by the appellant, even if there is no presence recorded of the appellant before the Appellate Authority and decide the issue on merits. The Appellate Authority by dismissing the appeal for non-prosecution would be abdicating its powers especially looking at the provisions where the Appellate Authority has been empowered to conduct such further enquiry as found necessary to decide the appeal, which decision also shall be on the points raised.

We, hence, set aside the order produced at Page 40 and direct the restoration of appeal before the Appellate Authority.

The petitioner shall appear before the Appellate Authority on 17.05.2023. The Appellate Authority or its office shall fix a date of hearing on the said date, with due acknowledgment taken from the appellant; if the date of hearing is issued from the office, proceed with the hearing on the date fixed and dispose of the appeal on merits within three months from the date of last hearing. We also direct the petitioner to cooperate in the hearing of the appeal and even if there is absence of the appellant or his authorized representative on the date of hearing, the Appellate Authority shall consider the appeal on merits and pass a speaking order.

The writ petition stands allowed with the above direction.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	03.05.2023
Transmission Date	