IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6134 of 2023

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M/S Friends Mobile through its Proprietor Md. Quadir Khan, Male, aged about 32 years, Son of Shakil Khan, Resident of Near Sadrunia Masjit, Minhaj Nager, Ward No. 2, Phulwari, Patna District-Patna, Bihar- 801505.

... ... Petitioner

Versus

1. The State of Bihar through the Commissioner of Commercial State Taxes, New Secretariat, Patna.
2. Assistant Commissioner, State Taxes, Patna East, Patna, Bihar.
3. Additional Commissioner, State Taxes, Patna East, Patna, Bihar.

... ... Respondents

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Appearance :

For the Petitioner	:	Ms. Archana Sinha @ Archana Shahi, Adv.
For the State	:	Mr. Vikash Kumar (SC 11)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 28-04-2023

Heard learned counsel for the petitioner and learned counsel for the State.

2. The petitioner is concerned with an appeal to be filed before the GST Tribunal, which has not yet been constituted. The petitioner was aggrieved with the assessment order which was taken up in appeal, in which, the appellate order dated 28-01-2023 (Annexure-2) was passed.

3. It is the submission of the learned counsel for the petitioner that only interest liability is disputed as coming out from the assessment order. It is also the submission of the petitioner that the admitted and assessed tax has been paid and what is now in dispute, which could be agitated before the GST Tribunal, is only the interest portion which also is Rs. 1,31,066.00/-. We see from sub-section (8) of Section 112 of the Central Goods and Services Tax, Act, 2017 (for brevity, CGST Act, 2017) that for maintaining an appeal before the Tribunal, the expectant appellant is supposed to deposit in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by the assessee, as per sub clause (a). Sub clause (b) requires a further amount of twenty per cent of the remaining amount of tax in dispute also to be remitted.

4. In the present case, we do not see any tax having been disputed and even the petitioner says that it is only the interest portion that is disputed.

5. In the above circumstances, if the petitioner has paid the admitted tax and also the assessed tax, which is due from him, as per the appellate order, then necessarily there shall be stay of recovery of interest till the GST Tribunal is constituted and two months expires from that period, within which time, the petitioner could initiate an appeal before the GST Tribunal.

6. The writ application stands disposed of.

7. It is made clear that we have not made any declaration on law and has only passed an order in the peculiar facts of this case. The assessing officer shall verify the deposit of the entire admitted and assessed tax with penalty, if any, and if only the interest is due, the attachment made shall also be lifted.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	
CAV DATE	
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