

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5166 of 2023

Manth Green Private Limited having one of its place of business near Vrindavan Nursing Home, Salimpur Ahra, Off Exhibition Road, Patna - 800001 through its authorized representative namely Anand Kumar Sureka male aged about 37 years son of Ramesh Kumar Sureka resident of Shradhanjali Apartment, N - 79/6, Lal Bahadur Shastri Road, Konnagar M, Hooghly, West Bengal - 712235.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Assistant Commissioner of State Taxes, Patna North Circle, Patna. (2020-2021)

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate Mr. Alok Kumar Jha, Advocate Mr. Mukund Kumar, Advocate Ms. Ekta Rani, Advocate
For the Respondent/s	:	Mr. Vivek Prasad (GP-7) Ms. Roona, A.C. to G.P. 7 Mr. Sanjay Kumar, A.C. to GP-7 Ms. Supragya, A.C. to G.P.-7 Ms. Manisha Singh, A.C. to G.P. 7

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 09-11-2023

Though the case was to be posted on 12.12.2023, we directed the Registry to post this case today in view of Notification No. 53 of 2023- Central Tax, dated 02.11.2023 (S.O. 4767(E)), issued by the Central Board of Indirect Taxes and Customs.

2. The petitioner, an assessee under the Bihar Goods



and Services Taxes Act, 2017 (for brevity “BGST Act”), has challenged the *ex parte* order passed by the Assessing Authority.

3. There is an appeal provided under Section 107 of the BGST Act, which has not been availed of. The *ex parte* order is dated 29.01.2021 and as of now, as per Section 107 of the BGST Act, the appeal would be grossly delayed, as Section 107 provides for three months’ time to file an appeal and a further time of one month in which an appeal could be filed with satisfactory explanation, for the delay occasioned.

4. This Court and the Hon’ble Supreme Court have held that when there is a specific period provided in the statute, within which period a delayed appeal could be filed; then neither the Appellate Authority nor this Court under Article 226 of the Constitution of India could condone the delay beyond the period provided.

5. The Central Board of Indirect Taxes and Customs has by Notification No. 53 of 2023- Central Tax, dated 02.11.2023 (S.O. 4767(E)) extended the time for filing appeal against an order passed by the Proper Officer on or before 31.03.2023 under Sections 73 and 74 of the BGST Act. This in fact extends the period for filing appeal beyond one month period as provided under Section 107(4) of the BGST Act, on



following the special procedure prescribed under the said Notification.

6. The special procedure prescribed under the Notification is seen from paragraph no. 2 to 6 which are extracted hereunder:-

2. The said person shall file an appeal against the said order in FORM GST APL-01 in accordance with sub-section (1) of Section 107 of the said Act, on or before 31st day of January 2024:

Provided that an appeal against the said order filed in accordance with the provisions of section 107 of the said Act, and pending before the Appellate Authority before the issuance of this notification, shall be deemed to have been filed in accordance with this notification, if it fulfills the condition specified at para 3 below.

3. No appeal shall be filed under this notification, unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to twelve and a half per cent. of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed, out of which at least twenty percent should have been paid by debiting from the Electronic Cash Ledger.

4. No refund shall be granted on account of this notification till the disposal of the appeal, in respect of any amount paid by the appellant, either on their own or on the directions of any authority (or) court, in excess of the amount specified in para 3 of this notification before the



issuance of this notification, for filing an appeal under sub- section (1) of Section 107 of the said Act.

5. No appeal under this notification shall be admissible in respect of a demand not involving tax.

6. The provisions of Chapter XIII of the Central Goods and Service Tax Rules, 2017 (12 of 2017), shall mutatis mutandis, apply to an appeal filed under this notification.

7. Hence an appeal against an order under Section 73 of 74 has to be filed on or before 31.01.2024, and any appeal filed which is pending before the authority could also be considered as properly filed, even if there is delay in such filing.

8. However, the maintainability of the appeal is further regulated by paragraph no. 3 which require that the admitted tax, interest, fine, fee and penalty arising from the impugned order is paid up along with a sum equal to 12.5% of the remaining amount of tax in dispute arising from the said order subject to a maximum of twenty-five crore rupees; out of which 12.5%, 20% should have been paid by debiting from the Electronic Cash Ledger. The further conditions in paragraph no. 4 to 6 also shall be applicable.

9. In the present case, the appeal has not been filed. In such circumstances, it is only proper that an appeal be filed subject to the conditions under paragraph no. 3 being satisfied.



10. Hence the petitioner would be entitled to satisfy paragraph no. 3 of the aforesaid Notification by paying up the amounts as would be required to maintain the appeal under the notification.

11. We direct the assessee to file an appeal satisfying the aforesaid conditions before the time stipulated in Notification; i.e. 31.01.2024, in which event, the appeal would be taken up and considered on merits. And if the conditions are not satisfied, then necessarily the appeal ought to be rejected or would stand rejected.

12. In this context, noticing the Notification, we also make it clear that wherever we have rejected the writ petitions filed against orders; rejecting appeals for reason of delay being beyond that prescribed under Section 107(4) of the BGST Act; the assessee would be entitled to invoke the said remedy *de hors* the orders of this Court and avail of the benefit of Notification aforementioned, subject to the conditions therein being satisfied. The Commissioner, State Taxes, Government of Bihar shall issue necessary instructions to the officers; empowered under the Act to carry out assessment and also consider appeals about the orders of this Court, which permits appeals to be restored on the conditions in this Notification being scrupulously complied



with even in cases where this Court has rejected the writ petitions filed against dismissal of delayed appeals, solely on the ground of delay occasioned.

13. We dispose of the writ petition on the above terms.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	10.11.2023
Transmission Date	

