IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6017 of 2023

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Surendra Rai Son of Late Sudama Rai, Resident of Mohalla Ward No.13, Bhujauli Colony, Ramchandra Shukla Nagar, Deoria (Uttar Pradesh), presently residing at Village-Mathiya, P.O.-Shahpur Via Nautan, P.S.-Nautan, District-Siwan.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. The Principal Commissioner (GST), Ministry of Finance (Department of Revenue), (Central Board of Indirect Taxes and Customs), Government of India, New Delhi.
3. The State of Bihar through the Commissioner-cum-Secretary, Government of Bihar, Patna.
4. The Commissioner-cum-Secretary State Tax, Government of Bihar, Patna.
5. The Special Commissioner of State Tax, Government of Bihar, Patna.
6. The Additional Commissioner of State Tax, Government of Bihar, Muzaffarpur.
7. The District Magistrate, Siwan.
8. The Joint Commissioner of State Tax, Government of Bihar Circle Chapra.
9. The Joint Commissioner of State Tax, Governemnt of Bihar, Siwan.
10. The Assistant Commissioner of State Tax, Circle, Siwan.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjay Kumar Singh
For the UOI	:	Dr. K.N. Singh , ASG
		Mr. Anshuman Singh, Sr. SC, SGSTSCX
For the State		Mr.P.K.Shahi, AG
		Mr. Vipin Kuma 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 : 09-05-2023

The petitioner in the above writ petition challenges the demand notice dated 03.03.2020, pursuant to the assessment order passed on 15.01.2020 respectively produced in the writ petition as Annexure-1. The petitioner assessee does not have a case that the assessment order was not served on him as required under law. The petitioner also had a statutory remedy by way of an appeal under Section 107 (4) of the Bihar Goods and Services Tax Act. The aforesaid provision requires an appeal to be filed within a period of three months and upon delay, to be filed within a further period of one month; which could also be considered if there is satisfactory explanation for the delay occasioned. The petitioner has not availed the remedy and at this point of time, cannot seek to avail the appellate remedy for reason of the limitation period having expired long prior. It is also trite that when the statute provides for a period of limitation and also requires a delayed appeal to be filed within a specified period, the appellate authority does not have the power to condone the delay occasioned in excess of the period specifically provided under the statute.

2. The present writ petition is filed on the demand notice being issued, which is not permissible when there was an alternate efficacious remedy, which was not availed by the petitioner for reason of his own default. There are specific contours for invocation of the extra ordinary remedy

under Article 226 of the Constitution of India, as has been delineated in the **State of H.P & Ors. v. Gujarat Ambuja Cement Limited & Anr.; (2005) 6 SCC 499**.

3. We find no such ground existing and in any event the attempt of the petitioner to bypass the appellate remedy, which he chose to not avail of, cannot be countenanced. We, hence, dismiss the writ petition *in limine*.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

M.E.H/uttam/-

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