IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7435 of 2023

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M/s. Shri Ram Engineering Tractors, Near I.T.I., Gonawan, Nawada, through its Proprietor Mr. Rampravesh Kumar Sinha (male), aged about 52 years, S/o Bhonu Prasad Sinha, Resident of Moti Bigha, Gondapur, Nawada - 805110.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Cum Commissioner, Department of State Taxes, Govt. of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeals), Magadh Division, Gaya.
3. The Deputy Commissioner of State Taxes, Nawada, Magadh, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Hrishikesh, Advocate
		Mr. Mahendra Prasad Bhartee, Advocate
For the Respondent/s	:	Mr.Vivek Prasad (GP-7)

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

Date : 17-05-2023

The writ petition is filed by an assessee under the Bihar Goods and Services Tax Act, 2017 (for brevity “BGST Act”) against the assessment order dated 03.10.2018, produced along with Annexure-1 series. The Assessing Officer had by the order dated 03.10.2018 confirmed the demand of Rs. 33,580.80 along with interest of Rs. 52,917.44 under the BGST Act. There was also a penalty imposed of Rs. 98,368/-. A rectification also was made on 15.10.2018, which order is produced along with Annexure-1 series. An appeal is said to have been filed before the Appellate Authority, which is evident from Annexure-2 series, which appeal was dated 11.09.2019. This appeal, however, as seen from Page 33 has been filed from the order dated 15.10.2018. The appeal was rejected by Annexure-3 series order dated 07.03.2020.

Even going by the documents produced by the petitioner, the order dated 15.10.2018 was challenged in appeal on 11.09.2019. The Appellate Authority has found that the same is filed grossly delayed; with a delay of 251 days.

The contours of the jurisdiction under Article 226 of the Constitution of India to interfere with appellable orders have been laid down by the Hon'ble Supreme Court in State of H.P & Ors. v. Gujarat Ambuja Cement Limited & Anr.; (2005) 6 SCC 499. It has been held that if an assessee approaches the High Court without availing the alternate remedy, it should be ensured that the assessee has made out a strong case or that there exists good grounds to invoke the extraordinary jurisdiction. While reiterating that Article 226 of the Constitution confers very wide powers on the High Court, it was clarified that nonetheless the remedy of writ is an absolutely discretionary remedy. The High Court, hence, can always refuse the exercise of discretion if there is an adequate and effective remedy elsewhere. The High Court can exercise the power only if it comes to the conclusion that there has been a breach of principles of natural justice or due procedure required for the decision has not been adopted. The High Court would also interfere if it comes to a conclusion that there is infringement of fundamental rights or where there is failure of principles of natural justice or where the orders and proceeding are wholly without jurisdiction or when the vires of an Act is challenged. There is no such plea made by the petitioner in the present case against Annexure-1 series order.

The claim of input tax credit and the computation thereon ought to have been agitated before the appellate authority. Having not availed the statutory remedies available in time, the petitioner cannot seek to approach this Court under Article 226 of the Constitution to challenge an assessment order specially with respect to the computation of the turn over and the determination of the taxable turnover and the tax payable, as arrived at by the Assessing Officer.

In the BGST Act, an appellate remedy is provided under Section 107, which has to be availed within a period of three months or with a delay within a further period of one month.

It is trite law that when there is a specific period for delay condonation provided, there cannot be any extension of the said period by the Appellate Authority or by this Court under Article 226 of the Constitution. The petitioner by his own failure has not availed the appellate remedy in time and in that circumstance, there can be no invocation of the extraordinary jurisdiction under Article 226 of the Constitution of India.

The writ petition stands dismissed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

P.K.P./Anushka

AFR/NAFR	
CAV DATE	
Uploading Date	19.05.2023
Transmission Date	