IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6908 of 2023

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Om Shiv Construction a proprietorship firm through its proprietor namely Jai Prakash Rai male aged about 43 years son of Sarandhar Rai resident of Ward number - 29, Koirpurva, District - Buxar, Bihar - 802101.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeals), Patna West Division, Patna.
3. The Assistant Commissioner of State Taxes, Buxar Circle, Buxar. (2020-2021)

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, 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 : 11-05-2023

The writ petition is filed against the appellate order dated 10.03.2023 (Annexure-3) which was rejected on the ground of delay. The appeal was filed against Annexure-1/A order dated 29.10.2021.

Section 107 of the Bihar Goods and Services Tax Act, 2017 (“BGST Act” hereafter) which permits an appeal to be filed within three months and also apply for delay condonation with satisfactory reasons within a further period of one month. The Hon’ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 202**0, In Re: Cognizance For Extension of Limitation. Therein, due to the pandemic situation limitation was saved between 15.03.2020 till 28.02.2022. It was also directed that an appeal could be filed within ninety days from 01.03.2022. Hence, an appeal could have been filed on or before 29.05.2022, which provision was not availed by the petitioner herein. The Hon’ble Supreme Court also declared that if a longer period than 90 days is provided in a Statute, then that longer period will apply. In the BGST Act, u/s 107(4) there is a provision for condonation of delay, if the appeal is filed delayed, within one month of expiry of limitation. Even if that be deemed to be appealable then the appeal ought to have been filed by 28.06.2022. The appeal is said to have been filed only on 24.02.2023, after 209 days from the date on which even the limitation period as stipulated by the Hon’ble Supreme Court, expired.

In the above circumstances, we find no reason to invoke the extraordinary jurisdiction under Article 226, especially since it is not a measure to be employed where there are alternate remedies available and the assessee has not been diligent in availing such alternate remedies within the stipulated time.

The writ petition hence would stand dismissed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

Rajkishore/
Shyam Bihari/-

AFR/NAFR	
CAV DATE	
Uploading Date	16.05.2023.
Transmission Date	