IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6885 of 2023

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1. M/S SRM Enterprises through its Partner Navneet Kumar Sinha, New Pandasarai, Laheriasarai, District - Darbhanga (Bihar) 846001.
2. Navneet Kumar Sinha S/o Jai Prakash Sinha, Resident of New Pandasarai, Laheriasarai, District - Darbhanga (Bihar) - 846001.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-cum-Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Principal Secretary- cum - Commissioner, Department of State Taxes, Government of Bihar, Patna.
3. The Additional Commissioner (Appeal), Darbhanga Division, Darbhanga.
4. The Joint Commissioner, State Tax, Darbhanga Circle, District - Darbhanga.
5. The Assistant Commissioner of State Tax, Darbhanga Circle, District Darbhanga.
6. The Deputy Commissioner of State Tax, Darbhanga Circle, District - Darbhanga.
7. The Executive Engineer, Rural Works Department, Work Division Biraul, P.S. and District - Darbhanga.
8. The Branch Manager, Axis Bank, B.K. Road, Opp. Wireless Office, Laheria Sarai, District - Darbhanga (Bihar) - 846001.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Nitesh Kumar, Advocate
		Mr. Piyush Saurav, 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 petitioners challenge the *ex parte* order of the appellate authority at Annexure-6.

Though the appeal was filed in time but the appellate authority merely for the reasons that despite opportunity being granted to the appellant to produce the documents in support of his case, he sought time and did not produce the same, rejected the appeal.

We have already held in **Purushottam Stores vs. The State of Bihar & Ors; CWJC No. 4349 of 2023** decided on 25.04.2023; looking at the provisions of the Bihar Goods and Services Tax Act especially sub-sections (8), (9), (10), (11) and (12) of Section 107 of the Act, that the Appellate Authority has a duty and an obligation under the statute to look into the merits of the matter and also examine the grounds raised by the appellant and decide the issue on merits. The Appellate Authority even while considering the appeal *ex parte* will have to consider the grounds raised in the memorandum of appeal, deciding the appeal on merits, failing which it would be abdicating its powers especially looking at the provisions where the Appellate Authority has been empowered to conduct such further enquiry as found necessary to decide the appeal, which decision also shall be on the points raised.

Learned Government Advocate also specifically points out sub-section (13) of Section 107 of the Bihar Goods and Services Tax Act, 2017, which provides that the Appellate

Authority shall, where it is possible to do so, hear and decide an appeal within a period of one year from the date on which it is filed. It is to be noticed that there is no specific mandate and it only says that if it is possible an appeal should be heard and disposed of within three months. This does not dilute the mandate on the appellate authority under sub-section (11) to pass an order on merit even if the appellant does not appear as held in **Purushottam Stores** (supra).

We, hence, set aside the order produced at Annexure-6 and direct the restoration of appeal before the Appellate Authority.

The petitioners shall appear before the Appellate Authority on 29.05.2023. The Appellate Authority or its office shall fix a date of hearing on the said date, with due acknowledgment taken from the appellant; if the date of hearing is issued from the office, proceed with the hearing on the date fixed and dispose of the appeal on merits within three months from the date of last hearing. We also direct the petitioner to cooperate in the hearing of the appeal and even if there is absence of the appellant or his authorized representative on the date of hearing, the Appellate Authority shall consider the appeal on merits and pass a speaking order.

The writ petition stands allowed with the above direction.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	17.05.2023
Transmission Date	