IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7411 of 2023

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M/s Bhagwati Construction, through its Partner Munna Yadav, aged about 47, Years, (Male), Son of Deva Yadav, resident of 891, Road No.7 Magadh Colony, Gaya P.S.-Chandauti, District-Gaya.

... ... Petitioner/s

Versus

1. Union of India through its Principal Secretary, Department of Finance (Revenue).
2. Principal Director General of Central Tax, New Delhi
3. Chief Commissioenr of Central Tax, New Delhi
4. State of Bihar through its Principal Secretary, Department of Finance (Revenue)
5. The Commissioner Sale Tax, Bihar, Patna.
6. Additional Commissioner, Appeal Sale Tax, Magadh Division, Gaya.
7. Assistant Commissioner of State Tax, Jurisdiction, Gaya Magadh. Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar, Advocate
For the Respondent/s : Mr.Additional Solicitor General

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

Date : 18-05-2023

The challenge in the above case is against the assessment order dated 05.03.2020. Admittedly, a show cause notice was issued on 07.02.2020, produced as Annexure-1 at page 15 of the memorandum. Obviously, no response was made to the notice issued and the Assessing Officer passed an order on 05.03.2020, which is produced as Annexure-2 at page 18. The petitioner did nothing to challenge the said order nor was the taxes paid in accordance with the order passed in the year 2023 by Annexure-3 dated 22.02.2023. The Assessing Officer issued a notice under Section 79(1)(c) of the Bihar Goods and Services Tax Act, 2017 to the various banks to hold the amount demanded, if the same remains in the account of the petitioner. It was then that the petitioner approached the Appellate Authority by an appeal dated 11.03.2022. The appeal stood dismissed as per the order produced as Annexure-4.

The writ petition is filed against the appellate order dated 14.03.2023 (Annexure-4 Series) which was rejected on the ground of delay. The appeal was filed against Annexure-2 order dated 05.03.2020.

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 2020**, 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 11.03.2023, after 257 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 is dismissed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

sharun/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19.05.2023
Transmission Date	N/A