IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8945 of 2023

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M/s Koshi Traders through its proprietor Mohammad Ziaul Hoda, Sex- Male, Aged about 52 years, Son of Mohammad Nasim Uddin Hoda, Residence-Cum-Office Address Mohalla - Ranihat, Ward No. 12, Post and Police Station - Simri Bakhtiyarpur, Bakhtiyarpur, District- Sharsha, Bihar - 85212.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of State Taxes, Government of Bihar, Patna, New Secretariat, Baily Road, Patna- 800001.
2. The Additional Commissioner (Appeals), State Taxes Division- Purnia, At, Post and Police Station - Purnia, District- Purnia.
3. The Assistant Commissioner-Cum-Adjudicating Authority, State Taxes Circle- Saharsa At, Post and Police Station - Saharsa, District- Saharsa.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Radha Raman, Advocate
For the Respondent/s	:	Mr.Raghwanand (GA-11)
		Mr.Pratik Kumar (AC to GA-11)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-10-2023

The writ petition is filed against the appellate order dated 21.02.2023, Annexure-5 which rejected the appeal on the ground of delay. The appeal was from Annexure-4 order of assessment passed on 01.02.2020. The appellate order specifically noticed 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. We have to take into account the saving of limitation granted by 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. Here, the order impugned in the appeal was dated 19.01.2023. An appeal could have been preferred on or before 12.08.2022 and also filed with delay before 12.09.2022. The appeal is said to have been filed only on 19.01.2023, after about four months from the date on which even the limitation period 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.

2. The learned counsel points out that on 07.10.2023, at the 52nd meeting of the G.S.T. Council, the following recommendation has been made:

> **B. <u>Measures for facilitation of trade</u>:**
>
> **(i) Amnesty Scheme for filing of appeals against demand orders in cases where appeal could not be**

> **filed within the allowable time period:**
>
> The Council has recommended providing an amnesty scheme through a special procedure under section 148 of CGST Act, 2017 for taxable persons, who could not file an appeal under section 107 of the said Act, against the demand order under section 73 or 74 of the CGST Act, 2017 passed on or before the 31st day of March, 2023, or whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in sub-section (1) of section 107. **In all such cases, filing of appeal by the taxpayers will be allowed against such orders upto 31st January, 2024,** subject to the condition of payment of an amount of pre-deposit of 12.5% of the tax under dispute, out of which at least 20% (i.e. 2.5% of the tax under dispute) should be debited from Electronic Cash Ledger. **This will facilitate a large number of taxpayers, who could not file appeal in the past within the specified time period.**

3. This is issued as a press release issued by the G.S.T. Council. The note to the press release is also extracted hereunder:

> **Note:** The recommendations of the GST Council have been presented in this release containing major item of decisions in simple language for information of the stakeholders. The same would be given effect through the relevant circulars/ notifications/ law amendments which alone shall have the force of law.

4. Hence, as soon as the recommendation is given

effect to, the petitioner/assessee gets a right to seek for restoration of the appeal filed before the first Appellate Authority. Reserving such liberty, if the recommendation is brought out as a notification or circular, the writ petition would stand dismissed.

5. It is made clear that the dismissal of the writ petition would not stand in the way of the petitioner seeking for restoration of the appeal or filing a fresh appeal, if and when the recommendation of the G.S.T. Council is brought out as notification/ circular/ amendment.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	16.10.2023
Transmission Date	