IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9003 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, Residence-Cum-Office Address- Mohalla- Ranihat, Ward No. 12, N.H.- 107, Post and Police Station-Simri Bakhtiyarpur, Bakhtiyarpur, District- Saharsha, Bihar- 852127.

... ... 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. Vivek Prasad, GP7

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

3 13-07-2023 1. In the present case, the assessment order was dated 22.03.2021 and the appeal was filed only on 19.01.2023.

2. The Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020**, In Re: Cognizance For Extension of Limitation 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.

3. 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 19.01.2023, after more than six months from the date on which even the limitation period as stipulated by the Hon'ble Supreme Court, expired.

4. We also notice the contours of the jurisdiction under Article 226 of the Constitution of India to interfere with appellable orders 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 the impugned order.

5. Having not availed the statutory remedies available, the petitioner cannot seek to approach this Court under Article 226 of the Constitution of India to challenge an assessment order especially 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.

6. 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 and in that circumstance, there can be no invocation of the extraordinary jurisdiction under Article 226 of the Constitution of India. We also find that there is no jurisdictional error, violation of principles of natural justice or abuse of process of Court averred or argued by the petitioner in the above writ petition. The petitioner seeks to challenge the demand on the ground of no physical copy of the notice and orders having not been served; while it is admitted that the same was sent on e-mail and auto-populated. The argument of the learned counsel that Rule 26(3) of the Bihar Goods and Services Tax Rules, 2017 specifically provided for a digital signature in all orders issued under the Act, which is prominently absent in the orders impugned, has already been dealt with in C.W.J.C. No.1200 of 2023. There is no other valid contention raised. The gross delay also stands against the petitioner.

7. As such, the writ petition would stand dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Bibhash/Saurabh

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