IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9194 of 2023

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Brajesh Kumar Son of Digamber Thakur A sole proprietorship having its place of business at Net Point, Near Lakhandei Bridge, Kiran Chowk, P.O. and P.S.- Sitamarhi, District- Sitamarhi Bihar- 843302.

... ... Petitioner/s

Versus

1. The State of Bihar Through the Commissioner-cum- Principal Secretary, Commercial Tax Department, Government of Bihar, Patna, Bihar.
2. The Commissioner of State Tax Goods and Services Tax, Commissionerate-Patna II, Division- Darbhanga.
3. The Assistant Commissioner of State Tax Sitamarhi Circle, Goods and Services Tax, Sitamarhi, Bihar.
4. Punjab National Bank Sitamarhi Branch, Bihar.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Shantanu Sagar, Advocate
For the Respondent/s : Mr. Vikash Kumar (SC-11)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-07-2023

The petitioner is aggrieved with the two orders passed respectively on 12.03.2020 and 19.03.2020, which, in the memorandum, is stated to be produced as Annexure-P/1 and P/2, but is actually produced as Annexures P/5 and P/6. These orders are also not the assessment orders, but the demands raised by the department in pursuance to assessment orders. An assessment order has to be challenged under Section 107(4) of the Bihar Goods and Services Tax Act. Admittedly, there is no such appeal filed from the orders. It is also pertinent that the writ petition itself is filed on 03.07.2023.

2. We were told by the learned counsel that the writ petition was, in fact, filed in the year 2021, the affidavit of the party having been executed on 29.09.2021, which is produced in page No. 42. However, the present writ petition is supported by an affidavit on page No.42(A), which has been signed by the petitioner only on 26.06.2023. The contention of the petitioner is that the petition was submitted online and it was never noticed as defective.

3. We, hence, took instructions from the Registry. We are told that a draft was created by the user on 01.10.2021, which was active up to 06.10.2021. However, nothing was done with respect to the same. Again, a petition was newly filed on 06.10.2021 which was treated as not accepted on 07.10.2021, and which remained as such up to 06.05.2023, without curing the defects. Again, the matter was re-filed on 06.05.2023 upon which the Registry had taken up the scrutiny and cleared it for posting on 10.05.2023 after the physical file is submitted. Absolute callousness on the part of the petitioner and his counsel in moving the writ petition has resulted in the delay.

4. Be that as it may, 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. 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.

5. 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.

6. 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 assessment orders 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.

7. 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 law averred or argued by the petitioner in the above writ petition. The gross delay also stands against the petitioner. In the present case, the assessment orders are not even produced.

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

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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AFR/NAFR	NAFR
CAV DATE	
Uploading Date	24.07.2023
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