IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8890 of 2023

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Ajay Kumar Sahu Son of Shri Radhey Shayam Sahu, Resident of Sultanpur khas, Mau Aima, Allahabad (Prayagraj) Uttar Pradesh -212507

... ... Petitioner/s

Versus

1. The State of Bihar Through the Commissioner State Tax cum Secretary, Bihar, Department of Commercial Tax, New Secretariat, Patna.
2. Additional Commissioner (Appeals) State Tax Magadh Division, Gaya.
3. The Joint Commissioner, State Tax Bhabhua Circle, Bhabhua, District Kaimur
4. The Deputy Commissioner Bihar Commercial Taxes, Bhabhua Dist. Kaimur.
5. The Branch Manager, H.D.F.C. Bank Phulpur Road, beside Tehsil Office, City Soraon, District Allahabad(Uttar Pradesh).

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Ramesh Kumar Agrawal, 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 : 01-08-2023

The writ petition is filed against the appellate order dated 09.01.2023 (Annexure-4) which was rejected on the ground of delay. The appeal was filed against Annexure-3 order dated 15.02.2022.

2. 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. The Appellate Authority also took 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. 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 applicable then the appeal ought to have been filed by 28.06.2022. The appeal is filed only on 09.01.2023 after 195 days from the date on which even the limitation period as stipulated by the Hon'ble Supreme Court, expired.

3. The learned counsel for the petitioner has relied on **Sabarmati Gas Ltd. v. Shah Alloys Ltd., (2023) 3 SCC 229**; which, according to us, does not apply to the present case. The decision arose in the context of the Sick Industrial Companies (Special Provisions) Act, 1985 (for brevity, SICA) having been repealed with effect from 01.12.2016, and the Insolvency and Bankruptcy Code, 2016(for brevity, IBC), having come into force. The question raised was whether a creditor, who was disabled from initiating proceedings against any industrial company with respect to which an enquiry under Section 16 SICA was pending by reason only of Section 22(1) of that Act being entitled to exclude the period during which such suspension was in force for the purpose of approaching the authority under the IBC. It was held that when a party is legally disabled from resorting to proceedings for recovering the outstanding dues, without the permission of the BIFR (Board for Industrial and Financial Reconstruction); statutorily, under Section 22(1) of SICA, the period of suspension of such proceedings is excludable in computing the period of limitation for enforcement of

such right in terms of Section 22(5) of SICA. Though, the said exclusion was not available under the provisions of the IBC, it was held that a party could assign the same as a sufficient cause for condoning the delay under Section 5 of the Limitation Act.

4. It was also held that depending upon the factual position, the period of delay and the period covered by suspension of the right under SICA has to be considered; failing which it would result in injustice, as the party was statutorily prevented from initiating action against the company with respect to which an enquiry was proceeding under the SICA.

5. We find absolutely no application of the principle in the above case. In fact, during the COVID situation the Hon'ble Supreme Court had permitted saving of limitation, which we have referred to. Despite the saving provided by the Hon'ble Supreme Court, the appellant failed to file an appeal within the further time provided by the Hon'ble Supreme Court after the period saved by the Hon'ble Supreme Court had expired.

6. 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.

7. The writ petition hence would stand dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Aditya/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	09.08.2023.
Transmission Date	