IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9461 of 2023

==

M/s Ganesh Kumar through its proprietors, Ganesh Kumar Male, aged about 46 years, son of Lalan Prasad Sharma, Resident of Lane No. 4, RMS Colony, Kankarbagh, Patna, Bihar-800020.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of Commercial State Taxes, Patna.
2. Deputy Commissioner, State Taxes, Patna South Circle, Patna.
3. Additional Commissioner State Taxes (Appeal), Patna West, Patna.

... ... Respondent/s

==

Appearance :
For the Petitioner/s : Ms. Archana Sinha @ Archana Shahi, Advocate
For the Respondent/s : M/s Vivek Prasad (GP 7)
Roona, AC to GP 7

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date : 11-07-2023

The petitioner challenges the ex parte order of the appellate authority at Annexure-4.

2. Though the appeal was filed in time but the appellate authority merely for the reasons that despite opportunity being granted to the appellant to produce the documents in support of his case, he did not produce the same and also despite the finding that the supplier was not issued a notice in the appeal, it was dismissed for non-prosecution.

3. We have already held in **Purushottam Stores vs. The State of Bihar & Ors; CWJC No. 4349 of 2023** decided

on 25.04.2023; looking at the provisions of the Bihar Goods and Services Tax Act especially sub-sections (8), (9), (10), (11) and (12) of Section 107 of the Act, that the Appellate Authority has a duty and an obligation under the statute to look into the merits of the matter and also examine the grounds raised by the appellant and decide the issue on merits. The Appellate Authority even while considering the appeal ex parte will have to consider the grounds raised in the memorandum of appeal, deciding the appeal on merits, failing which it would be abdicating its powers especially looking at the provisions where the Appellate Authority has been empowered to conduct such further enquiry as found necessary to decide the appeal, which decision also shall be on the points raised.

4. We, hence, set aside the order produced at Annexure-2 and direct the restoration of appeal before the Appellate Authority.

5. The petitioner shall appear before the Appellate Authority on 25.07.2023. The Appellate Authority or its office shall fix a date of hearing on the said date, with due acknowledgment taken from the appellant; if the date of hearing is issued from the office, proceed with the hearing on the date fixed and dispose of the appeal on merits within three

months from the date of last hearing. We also direct the petitioner to cooperate in the hearing of the appeal and even if there is absence of the appellant or his authorized representative on the date of hearing, the Appellate Authority shall consider the appeal on merits and pass a speaking order.

6. The writ petition stands allowed with the above direction.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Spd/-Shiv/-

AFR/NAFR	
CAV DATE	
Uploading Date	13.07.2023.
Transmission Date	