

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.9198 of 2023**

=====

M/s Chunnu Yadav a Proprietorship firm having its Place of Business At, P.O. and P.S. Kariho, Sheikhpura, District Sheikhpura through its Proprietor Chunnu Yadav aged about 30th Years, Male, Son of Arun Yadav Resident of At P.O. and P.S. Kariho, District-Sheikhpura.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeal), Bhagalpur Division, Bhagalpur.
3. The Joint Commissioner of State Taxes, Bhagalpur Division, Bhagalpur.

... .. Respondent/s

=====

**Appearance :**

For the Petitioner/s : Mr. Manoj Kumar Keshri, Advocate  
For the Respondent/s : Mr. Vikash Kumar (SC11)

=====

**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE PARTHA SARTHY**

**ORAL JUDGMENT**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

**Date : 11-07-2023**

The petitioner is before this Court raising a challenge against an assessment order which was not properly appealed against. The assessment order was passed on 06.02.2021 and an appeal against the same was filed on 09.12.2022, grossly delayed. The assessment order is produced at Annexure-7 and the appellate order rejecting the appeal on the ground of delay is produced at Annexure-8.

2. The petitioner alleges that the assessment order was itself *ex parte* and the returns could not be uploaded since



the Accountant was not fully conversant with the practice and procedure under the Bihar Goods and Services Tax Act, 2017 (“BGST Act” hereafter).

3. We have to immediately notice that the assessment order is for the assessment year 2019-2020 and there cannot be a contention raised that it was during the transition period that the assessee failed to upload the return. The petitioner also claimed that there is an excess amount of tax paid which is liable to be refunded.

4. The appellate order specifically noticed Section 107 of the BGST Act 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.

5. 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 saved the limitation between 15.03.2020 till 28.02.2022. 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.

6. The appeal was filed only on 09.12.2022 without annexing a certified copy of the assessment order which was to be filed within seven days from that date. Despite opportunity given to the petitioner by the appellate authority to file certified copy of the assessment order on 24.01.2023, 08.02.2023 and 06.03.2023, he did not file the same and accordingly, the appeal was rejected on the ground that the petitioner is not interested in the matter and that the appeal was also filed after lapse of twenty months. Though twenty months cannot be deemed to be the delay occasioned, it was not within the time provided under section 107(4) of the BGST Act.

7. 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.

8. The learned counsel relies on Annexure-10 judgment dated 09.12.2022 passed in CWJC No.15607 of 2022 titled as M/s G. Power Solution v. The State of Bihar & Ors. by a co-ordinate Bench of this Court, which proceeds to interfere with an *ex-parte* assessment order passed in violation of principles of natural justice. Here the petitioner does not have a contention of no notice having been issued. If the assessee does not cooperate in the assessment proceedings, then the assessing officer has to proceed *ex-parte* and there can be no contention raised of violation of principles of natural justice. The learned counsel then asserts the right of appeal before the Tribunal, which Tribunal under the BGST Act has not been constituted. We do not find any merit in the said contention since the 1<sup>st</sup> appellate authority has dismissed the appeal on grounds of delay and second appeal could only be on that ground, which is not tenable. When a statute provides for a time to file appeal and also a further period in which a delayed appeal can be moved; then there can be no



extension of the time provided to file a delayed appeal. The law only favours the diligent.

9. 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.

10. The writ petition hence would stand dismissed.

**(K. Vinod Chandran, CJ)**

**( Partha Sarthy, J)**

Sunil/-

|                   |            |
|-------------------|------------|
| NAFR/AFR          | NAFR       |
| CAV DATE          |            |
| Uploading Date    | 14.07.2023 |
| Transmission Date |            |

