IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12278 of 2023

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M/s Chaurasia Enterprises Main Road, Bihta, Patna. Bihar-801103 through its Proprietor Upendra Prasad Chaurasia (male) aged about 55 Years, Son of Maheshwar Prasad Chaurasiya, Resident of Naktakuwan, Bihta, P.S. Bihta, District-Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner State Taxes-Cum-Principal Secretary, Commercial Taxes Department, Bihar, Patna having its Office at Vikas Bhawan, Patna.
2. The Commissioner State Taxes-Cum Principal Secretary, Commercial Taxes Department, Bihar, Patna having its Office at Vikas Bhawan, Patna.
3. The Additional Commissioner of State Taxes (Appeal), Patna. West Division, Patna.
4. The Deputy Commissioner of State Taxes, Danapur Circle, Danapur.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Shive Kumar, Advocate
For the Respondent/s : Mr. P.K. Shahi, A.G.

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

Date : 29-08-2023

The petitioner, an assessee, under the Bihar Goods and Services Tax Act, 2017, challenged the appellate order dated 14.03.2023 passed by the 3rd Respondent under Section 74 of the Act. The short ground, on which the challenge is raised, is that the Appellate Authority has dismissed the appeal for reason of non-prosecution of the same when even in the context of non-appearance of the appellant, the Appellate Authority was statutorily obliged to dispose of the appeal on merits. Learned counsel appearing for the petitioner also relies on the decision of the Hon'ble Supreme Court in **Commissioner of Income Tax, Madras vs. S.Chenniappa Mudaliar, Madurai; (1969)1SCC591**.

2. The appellate order dated 14.03.2023 is in an appeal filed against the order dated 25.11.2021, produced by the petitioner which is at Annexure-4.

3. It is in the teeth of the interpretation of the provisions of the statute by this Court in Purushottam Stores [2023 (3) BLJ 619] that the impugned order has to be examined specially in the light of the ground raised, of a peremptory dismissal for non-prosecution or absence of a counsel. We see from the order that the Appellate Authority has extracted the grounds of appeal and the grounds on which the Assessing Officer has proceeded, and nothing else.

4. There is no consideration on merits and due compliance of the requirement under Section 107 in the impugned order is totally absent. It is trite that in exceptional circumstances, one of which is a clear abuse of process of law,

the invocation of Article 226 Constitution of India, despite the existence of an efficacious alternate remedy is permissible as has been held in **State of H.P & Ors. v. Gujarat Ambuja Cement Limited & Anr.; (2005) 6 SCC 499**. Here is a case where the Appellate Authority failed to follow the mandate in the statute for disposal of an appeal, which has to be on merits, even if the assessee/appellant had failed to appear before the Authority. We also notice that there is no efficacious alternate remedy available as of now, against the appellate order, since the Tribunal, to which a further appeal is provided, has not been constituted. Leaving the Assessee/petitioner to the appellate remedy as and when the Tribunal is constituted, that too with a further direction to pay 20% of the disputed tax amount would unnecessarily prejudice the assessee.

5. On the above reasoning, we deem it appropriate that the appellate order is set aside for the reasons stated above, without any observation on merit. We direct the Appellate Authority to restore the appeal to its files and the appellant shall appear before the authority on 08.09.2023. 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 two 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. The writ petition stands allowed with the above direction.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Bibhash/Saurabh

AFR/NAFR	
CAV DATE	
Uploading Date	4.09.2023
Transmission Date	