

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10869 of 2023

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M/s. Shivam Enterprises through its proprietor Abhay Shankar Thakur @ Abhay Shanker Thakur, (Male), aged about 51 Years, S/o Bir Shamsher Thakur, Resident of Ward No. 9, Village and P.O.- Mishroliya, P.S.- Chiraiya, District- East Champaran.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Department of Revenue, Industry of Finance, North Block, New Delhi- 110001.
2. The Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi- 110001.
3. The State of Bihar, through the Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
4. The Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
5. The Additional Commissioner of State Taxes (Appeals), Tirhut Division, Muzaffarpur.
6. The Joint Commissioner of State Taxes, Motihari Circle, Motihari.
7. The Assistant Commissioner State Taxes, Motihari Circle, Motihari.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Madan Kumar, Advocate Mr. Brisketu Sharan Pandey, Advocate
For the Respondent/s	:	Dr. K.N. Singh, ASG Mr. Vivek Prasad, GP-7

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

Date : 07-08-2023

1. The instant writ petition has been filed under Article 226 of the Constitution of India seeking multifarious reliefs.

2. The petitioner essentially is desirous of availing statutory remedy of appeal against the impugned order



before the *Appellate Tribunal* (hereinafter referred to as "*Tribunal*") under Section 112 of the Bihar Goods and Services Tax Act (hereinafter referred to as "B.G.S.T. Act").

3. However, due to non-constitution of the *Tribunal*, the petitioner is deprived of his statutory remedy under Sub-Section (8) and Sub-Section (9) of Section 112 of the B.G.S.T. Act.

4. Under the circumstances, the petitioner is also prevented from availing the benefit of stay of recovery of balance amount of tax in terms of Section 112 (8) and (9) of the B.G.S.T Act upon deposit of the amounts as contemplated under Sub-section (8) of Section 112.

5. The respondent State authorities have acknowledged the fact of non-constitution of the *Tribunal* and come out with a notification bearing Order No. 09/2019-State Tax, S. O. 399, dated 11.12.2019 for removal of difficulties, in exercise of powers under Section 172 of the B.G.S.T Act, which provides that period of limitation for the purpose of preferring an appeal before the *Tribunal* under Section 112 shall start only after the date on which the President, or the State President, as the case may be, of the *Tribunal* after its constitution under Section 109 of the B.G.S.T Act, enters office.



6. This Court is, therefore, inclined to dispose of the instant writ petition in the following terms:-

(i) Subject to deposit of a sum equal to 20 percent of the remaining amount of tax in dispute, if not already deposited, in addition to the amount deposited earlier under Sub-Section (6) of Section 107 of the B.G.S.T. Act, the petitioner must be extended the statutory benefit of stay under Sub-Section (9) of Section 112 of the B.G.S.T. Act. The petitioner cannot be deprived of the benefit, due to non- constitution of the Tribunal by the respondents themselves. The recovery of balance amount, and any steps that may have been taken in this regard will thus be deemed to be stayed. It is not in dispute that similar relief has been granted by this Court in the case of *SAJ Food Products Pvt. Ltd. vs. The State of Bihar & Others* in C.W.J.C. No. 15465 of 2022.

(ii) The statutory relief of stay, on deposit of the statutory amount, however in the opinion of this Court, cannot be open ended. For balancing the equities, therefore, the Court is of the opinion that since order is being passed due to non-constitution of the Tribunal by the respondent-Authorities, the petitioner would be required to present/file his appeal under Section 112 of the B.G.S.T. Act, once the Tribunal is constituted and made functional and the President or the State President may enter office. The appeal would be required to be filed observing the statutory requirements after coming into existence of the Tribunal, for facilitating consideration of the appeal.

(iii) In case the petitioner chooses not to avail the remedy of appeal by filing any appeal under Section 112 of the B.G.S.T. Act before the



Tribunal within the period which may be specified upon constitution of the Tribunal, the respondent- Authorities would be at liberty to proceed further in the matter, in accordance with law.

(iv) If the above order is complied with and a sum equivalent to 20 per cent of the remaining amount of the tax in dispute is paid then, if there is any attachment of the bank account of the petitioner pursuant to the demand, the same shall be released.

7. With the above liberty, observation and directions, the writ petition stands disposed of.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Shiv/Spd

AFR/NAFR	
CAV DATE	N/A
Uploading Date	08.08.2023.
Transmission Date	N/A

