IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10338 of 2023

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Dayanand Prasad, S/o Ishwaradhari Prasad, Resident of Flat No. 302, Sundaram Residency, Sahadev Path, West Patel Nagar, P.O. and P.S.- Lal Bahadur Shastri Nagar, Town and District-Patna-800023, Proprietor M/S Dayanand Prasad.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner-cum-Secretary, Commercial Taxes Department, Bihar, Patna.
2. The Commissioner of State Tax, having its office at Vikas Bhawan, Bailey Road, Patna.
3. The Additional Commissioner of State Tax (Appeal) Patna West Division, Patna.
4. The Deputy Commissoner of State Tax, Patna Central, Patna West Circle, Patna.
5. The Principal Secretary, Road Construction Department, Govt. of Bihar, Patna.
6. The Executive Engineer, Road Division, Bihar, R. Block, Near Telephone Bhawan, Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Manish Jha, 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 : 25-07-2023

The petitioner is aggrieved with the fact that the mistake committed by the Executive Engineer, Road Division has resulted in mulcting of liability on the petitioner. Admittedly, the assessment was based on the deduction made by the Executive Engineer, Road Division and paid to the Department on behalf of the works contractor, the petitioner herein.

2. The petitioner submitted that it was wrongly paid on his behalf since there is another concern called Dayanand Prasad Sinha and Company, which is a separate entity.

3. The assessment order, however, indicated that the tax was assessed on the basis of the deductions made by the Executive Engineer, Road Division and paid to the Department, on behalf of the petitioner, as TDS. The allegation was that the works on which the tax was deducted was not disclosed by the petitioner in the returns filed.

4. The assessment order was challenged in appeal which also was dismissed. In fact, the specific contention of the appellant-petitioner that deductions of another concern have been made and shown in the account of the petitioner, was specifically rejected by the Tribunal. The Tribunal also noticed that there was absolutely no evidence produced to substantiate the contention.

5. The learned Government Advocate brings our notice to Section 39 of the GST Act, which also prohibits the petitioner to make a rectification of the error, if any, caused.

6. In any event, the appeal having been dismissed on facts, we are not inclined to invoke the jurisdiction under Article

226 of the Constitution, however, the petitioner essentially has a 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").

7. 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.

8. 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.

9. 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.

10. 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*.
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> (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.

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

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Prakash/avinash

AFR/NAFR	
CAV DATE	N/A
Uploading Date	28.07.2023
Transmission Date	N/A