

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11333 of 2023

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M/s Narayani Industry, a Partnership firm having its place of business at NH-28, Bakhtar Asthan Phulwaria, Barauni, Begusarai through one of its Partner namely Sandeep Kumar @ Sandeep Kumar Maskara, Male, Aged about 48 years, Son of Santosh Kumar Maskara Resident of Ward No. 22, Near Karpuri Asthan Chowk, Begusarai P.S. Begusarai, District - Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Principal Secretary-cum-Commissioner, State Taxes, Government of Bihar, Patna.
3. The Joint Commissioner of State Taxes, Teghra Circle, Teghra, Begusarai.
4. The Deputy Commissioner of State Taxes, Teghra Circle, Teghra, Begusarai.
5. The Assistant Commissioner of State Taxes, Teghra Circle, Teghra, Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Mohit Agarwal, 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 : 11-08-2023

The petitioner, an assessee under the Bihar Goods and Services Tax Act, 2017 (for brevity “BGST”) is aggrieved with the assessment order passed with determination of tax both under the Central Goods and Services Tax Act, 2017 (CGST) and State Goods and Services Tax Act, 2017 (SGST), as also the



liability to interest and penalty as seen from Annexure-3 Orders. There are three orders produced as 04.03.2023, 10.03.2023 and 18.03.2023. All these orders were appealable under section 107 of the BGST Act. However, sub-section (4) of Section 107 provides for a period of three months within which an appeal can be filed and a further period of one month within which a delayed appeal can be considered by the First Appellate Authority; on sufficient reasons being shown for the delay occasioned. The last of the orders produced as Annexure-3 is dated 18.03.2023 and the appeal could have been filed on or before 17.06.2023. A further time of one month; that is till 16.07.2023 was available to file a delayed appeal with reasons cited for the delay. The petitioner has not availed of the appellate remedy and has chosen to approach this Court under Article 226 of the Constitution of India after the appeal period is over and also the period within which an appeal could have been filed with a delay condonation application.

2. We also notice the contours of the jurisdiction under Article 226 of the Constitution of India to interfere with appealable 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.

3. Having not availed the statutory remedies available, the petitioner cannot seek to approach this Court under Article 226 of the Constitution of India to challenge an assessment order especially with respect to the computation of the turn over



and the determination of the taxable turnover and the tax payable, as arrived at by the Assessing Officer. In the BGST Act, an appellate remedy is provided under Section 107, which has to be availed within a period of three months or with a delay within a further period of one month.

4. It is trite law that when there is a specific period for delay condonation provided, there cannot be any extension of the said period by the Appellate Authority or by this Court under Article 226 of the Constitution.

5. We find that there is no jurisdictional error, violation of principles of natural justice or abuse of process of law averred or argued by the petitioner in the above writ petition. From the records produced before us, it is clear that an inspection was conducted in the premises of the assessee and the same was also found locked. The assessee claims that his stock was kept in another go-down; which should have been informed to the Tax Authorities. It was in this circumstance that an assessment was made and there is no ground stated in the writ petition which would enable invocation of the extraordinary remedy under Article 226; as has been delineated in ***Gujarat Ambuja (supra)***. The petitioner only makes a bland assertion of violation of fundamental and legal rights guaranteed to the



petitioner under Articles 14, 19(1)(g) and 300A of the Constitution of India without any substantiation.

6. We find absolutely no reason to entertain the writ petition and dismiss the same.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	18.08.2023
Transmission Date	

