IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15465 of 2022

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SAJ Food Products Pvt. Ltd. a registered company having its registered office at Purna Bhaban, 5/1, Acharya Jagdish Chandra Bose Road, Kolkata-700020 through its authorized representative namely Siddhartha Ghosh male aged about 47 years son of Mrinal Kanti Ghosh resident of Phonetic Commercial Institute, Railway Institute Road, Near Mont Bretia School, Dumariyatand, Dhanbad- 826001, Jharkhand.

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary cum Commissioner, Department of State Taxes, New Secretariat, Bailey Road, Patna.
2. The Secretary cum Commissioner, Department of State Taxes, New Secretariat, Bailey Road, Patna.
3. The Additional Commissioner of State Taxes (Appeals), Central Division, Patna.
4. The Deputy Commissioner of State Taxes, Special Circle Patna (2018-2019).

... ... Respondent/s

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Appearance :

For the Petitioner	:	Mr. Gautam Kumar Kejriwal, Advocate Mr. Atal Bihari Pandey, Advocate Mr. Alok Kumar Jha, Advocate Mr. Mukund Kumar, Advocate
For the State	:	Mr. Vivek Prasad, GP-7
For the Union of India	:	Dr. K.N. Singh, ASG Mr. Anshuman Singh, CGC Mr. Prabhat Kumar Singh, AC to ASG

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

4 23-03-2023 The instant writ petition has been filed under Article 226 of the Constitution of India seeking following reliefs:-

> *"a) For issuance of writ in the writ of certiorari for quashing of the order dated 18.07.2022 passed and issued vide memo number 436/Patna by the respondent number 3 whereby the appeal preferred by the petitioner against the order dated 14.02.2020 has been rejected and a modified order has been passed along with a summary of demand issued in form GST*

APL-04;
b) For issuance of a writ in the nature of certiorari for quashing of the order dated 14.02.2020 and the summary of order issued in form GST DRC-07 dated 19.02.2020 passed by the respondent number 4 in exercise of powers under section 74 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the central act 2017 for short) and Bihar Goods and Services Tax Act 2017 (hereinafter referred to as the Bihar act 2017 for short);
c) For further issuance of a writ or order or direction restraining the respondents from taking any coercive action against the petitioner for recovery of the amount of tax, interest and penalty demanded in terms of the impugned order passed by the respondent number 3 and 4;
d) For holding and a declaration that the damage discount of 0.75% offered by the petitioner against each and every tax invoice issued in favour of the distributors/purchasers is excludible from the value of supply in terms of section 15 (3) of the Central Act 2017 read with Bihar Act 2017 once the same is mentioned and declared in the tax invoice delivered to the purchaser and therefore no question of reversal of input tax credit proportionate to such damage discount would arise;
e) For grant of any other relief or reliefs to which the petitioner is found entitled to in the facts and circumstances of the case."

The petitioner 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").

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.

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.

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.

Considering the facts and circumstances noted above, this Court in the case of ***Angel Engicon Private Limited vs. the State of Bihar & Anr.*** passed in ***C.W.J.C No. 1920 of 2023*** has disposed of the writ petition with certain observations and directions, allowing certain liberty to the petitioner, which reads as follows:

> *"If the petitioner makes a deposit of a sum equal to 20 percent of the remaining amount of tax in dispute, in addition to the amount deposited earlier under Sub-Section (6) of Section 107 of the B.G.S.T. Act, then the petitioner must be extended the statutory benefit of stay under Sub-Section (9) of Section 112 of the B.G.S.T. Act, for he 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.*
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> *The statutory relief of stay on deposit of the statutory amount, 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.*
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> *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.

With the above liberty, observation and directions, the writ application stands disposed of."

There is an additional fact in the instant case, as asserted by the petitioner, that in terms of the liberty granted under earlier order dated 16.11.2022, in these proceedings, he has already deposited 20 percent of the remaining amount of tax in dispute.

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

(i) Subject to verification of the fact of deposit of a sum equal to 20 percent of the remaining amount of tax in dispute, or deposit of the same, 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, for he 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.

(ii) The statutory relief of stay on deposit of the statutory amount, 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.

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

(Chakradhari Sharan Singh, ACJ)

(Madhuresh Prasad, J)

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