IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16267 of 2022

Bablu Kumar, aged about 39 years, male, Son of Shri Hardev Ray, Resident of Bishunpur, Pakari, Pakri, Patna- 800002.

... ... Petitioner

Versus

1. Union of India through the Secretary (Revenue), Ministry of Finance, Government of India, North Block, New Delhi-110001.
2. The Goods and Services Tax Council, through it's Secretary, 5th Floor, Tower II, Jeevan Bharati Building, Janpath Road, Cannaught Place, New Delhi-110001.
3. The State of Bihar, through its Secretary, Commercial Tax Department, Vikas Bhawan, Bailey Road, Patna- 800001.
4. The Commissioner of Central GST and Central Excise, Patna- I, 3rd Floor, Kendriya Rajaswa Bhawan (Annexe Building), Bir Chand Patel Path, Path-Patna- 800001.
5. The Commissioner, Bihar Commercial Tax Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna- 800001.
6. The Additional Commissioner (Appeal), Bihar State GST, Patna West Division, Bikri Kar Bhawan, Anta Ghat, Gandhi Maidan, Patna - 800001.
7. The Assistant Commissioner, Bihar State GST, Patna South, Patna West Circle, Bikri Kar Bhawan, Anta Ghat, Gandhi Maidan, Patna - 800001.
8. The District Magistrate, Patna, Bihar.
9. The Executive Engineer, Patna West Building Division, Danapur, Patna.

... ... Respondents

Appearance :

For the Petitioner	:	Mr. Amit Pandey, Adv.
For the State	:	Mr. Vikash Kumar SC-11
For the U.O.I.	:	Dr. K. N. Singh, Sr. Adv. (ASG) with Mr. Anshuman Singh Sr. SC, CGST & CX

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

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

4 25-02-2023 The instant writ petition has been filed under Article 226 of the Constitution of India seeking following reliefs:-

"i) To issue a writ in the nature

of certiorari for quashing the Order Reference No. ZD100322010171L dated 15.03.2022 and Order dated 14.03.2022 in Appeal Case No. GST/PS-08/20-21 bearing ARN AD100820000580Z passed by the Additional Commissioner (Appeal) of State Tax, Bihar State GST, Patna West Division, Patna, whereby and where under the Appeal bearing Reference No. AD1008200000580Z dated 26.08.2020 filed against the Order bearing Reference No. ZA100320013372M dated 08.03.2020 passed by the Assistant Commissioner, Bihar State GST, Patna South: Patna West Circle under Section 107 of the Central/ Bihar GST Act, 2017 was rejected without grant of any opportunity of being heard and without any reasoned or speaking Order; And/or

(ii) To issue a writ in the nature of certiorari for quashing the Order contained in letter no 9726 dated 05.08.2022 issued under the signature of District Magistrate, Patna directing therein to the Executive Engineer, Building Construction Department, West Division. Danapur, Patna to ensure the payments of due GST from the defaulter contractors and consequently also quash the order contained in letter no.-8160

dated 17.08.2022 with respect to the petitioner issued under the signature of The Executive Engineer, Patna West Building Division, Danapur Patna whereby and whereunder it is mandated to the petitioner to deposit the due GST otherwise the petitioner would be deprived from payment/other benefits.

(iii) For further restraining the respondents from taking any coercive action against the petitioner for recovery of the amount of tax and interest in terms of the impugned order of the respondent number 7 affirmed in appeal by the respondent no 6 during the pendency of the present writ application.; And/or

iv) For further initiating a proceedings of contempt for awarding suitable punishment to Respondent No-6 for intentional and willful violation of the Judgment and Order dated ***28.04.2021*** *passed in* ***CWJC no 2095 of 2021****; And/or*

v) To grant any other relief or reliefs to which the petitioners are entitled 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 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.*
>
> *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.

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."

The instant writ petition is disposed of in the same terms, allowing the petitioner liberty as has been granted to the petitioner in **C.W.J.C. No. 1920 of 2023**.

(Chakradhari Sharan Singh, ACJ)

(Madhuresh Prasad, J)

shyambihari/-

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