IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14482 of 2023

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M/s PAM-G Enterprises through its Proprietor Kishore Kamal, aged about- 38 years, Son of Late Awadesh Kishore, Resident of Village- Gopalpur Math, P.O.- Gopalpur Math, P.S.- Masaurhi, District- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, the State Tax Dept.
2. The State Tax Commissioner, Bihar, Patna.
3. The State Tax Assistant Commissioner South, Anchal, Patna.
4. The Magadh University, Bodh Gaya, Patna.
5. The Registrar, Magadh University, Bodh Gaya.
6. The Principal, S.B.A.N. College, Darhetalari, Arwal.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhay Kumar
For the Respondent/s : Mr. Vivek Prasad (GP-7)
Ms. Roona, Advocate
Mr. Sanjay Kumar, Advocate
Ms. Supragya, Advocate
Ms. Manisha Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-11-2023

The petitioner is concerned with an order passed on 20.11.2021. There was an appeal provided under the Bihar Goods and Services Act, 2017. As per Section 107(4), an appeal would be maintainable within 3 months of the order or with a delay condonation application within a further period of 1 month. No such appeal has been filed. The writ petition is itself delayed for almost 3 years.

2. The petitioner has a contention that his account was closed by the Sales Tax Authority and only then he realized that there was a demand raised against him. The assessment order passed is auto populated and it is the responsibility of the dealer to verify the site periodically. Further, it has to be noticed that the petitioner has averred in the writ petition that the account was closed in the month of March, 2023. Only in the month of March, 2023, the petitioner was made aware of the closure of the account which led to the information about the order passed. However, there is no date mentioned, on which the account is said to have been closed nor is it stated as to on which date he came to know of the closure of the account. Even if the argument is accepted, there is still a delay of more than 8 months in filing of the writ petition. Article 226 is not a remedy which could be availed after time for filing of appeal has expired. We find no reason to entertain the grounds in the writ petition.

3. The special procedure prescribed under the Notification is seen from paragraph no. 2 to 6 which are extracted hereunder:-

> 2. The said person shall file an appeal against the said order in FORM GST APL-01 in accordance with sub-section (1) of Section 107 of the said Act, on or before 31st day of January 2024:
>
> **Provided** that an appeal against the said order filed in accordance with the provisions of section 107 of the said Act, and pending before the Appellate Authority before the issuance of this notification, shall be deemed to have been filed in accordance with this notification, if it fulfills the condition specified at para 3 below.
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> 3. No appeal shall be filed under this notification, unless the appellant has paid-
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> (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
>
> (b) a sum equal to twelve and a half per cent of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed, out of which at least twenty percent should have been paid by debiting from the Electronic Cash Ledger.
>
> 4. No refund shall be granted on account of this notification till the disposal of the appeal, in respect of any amount paid by the appellant, either on their own or on the directions of any authority (or) court, in excess of the amount specified in para 3 of this notification before the issuance of this notification, for filing an appeal under sub- section (1) of Section 107 of the said Act.
>
> 5. No appeal under this notification

> shall be admissible in respect of a demand not involving tax.
>
> 6. The provisions of Chapter XIII of the Central Goods and Service Tax Rules, 2017 (12 of 2017), shall *mutatis mutandis*, apply to an appeal filed under this notification.

4. Hence an appeal against the order under Section 73 or 74 has to be filed on or before 31.01.2024, and any appeal filed which is pending before the authority could also be considered as properly filed, even if there is delay in such filing.

5. However, the maintainability of the appeal is further regulated by paragraph no. 3 which require that the admitted tax, interest, fine, fee and penalty arising from the impugned order is paid up along with a sum equal to 12.5% of the remaining amount of tax in dispute arising from the said order subject to a maximum of twenty-five crore rupees; out of which 12.5%, 20% should have been paid by debiting from the Electronic Cash Ledger. The further conditions in paragraph no. 4 to 6 also shall be applicable.

6. In the present case, the appeal was not filed. In such circumstances, it is only proper that an appeal be filed satisfying the conditions in paragraph no. 3.

7. Hence the petitioner would be entitled to satisfy paragraph no. 3 of the aforesaid Notification by paying up the amount as would be required to maintain the appeal under the notification.

8. Let an appeal against the impugned order dated 20.11.2021 be filed satisfying the aforesaid conditions before the time stipulated in Notification; i.e. 31.01.2024, in which event, the appeal would be taken up and considered on merits.

9. We allow the writ petition on the above terms.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

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AFR/NAFR	NAFR
CAV DATE	
Uploading Date	06.12.2023
Transmission Date	