

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16084 of 2022

Shapoorji Pallonji and Company Pvt. Ltd. a registered company having one of the places of business at 202, second floor, block C, Shanti Lok Apartment, Mazar Gali, Pillar Number- 75, P.S.- Shastri Nagar, Patna-80014, through its authorized representative namely Mr. Mukesh Kumar Shriwastav male aged about 47 years son of Shri Gopal Ji Sahay Resident of Madariha, P.S.- Charpokhari, District- Bhojpur, Bihar-802223.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Deputy Commissioner of State Taxes, Special Circle, Patna.
3. The Additional Commissioner of State Taxes, (Appeal), Central Division, Patna.
4. The Superintendent of CGST and CE Phulwarisharif Range, 6th Floor, B Block, Karpoori Thakur Sadan, Ashiyana- Digha Road, Patna- 800025.

... .. Respondent/s

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

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

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

3 23-03-2023 The instant writ petition has been filed under Article 226 of the Constitution of India seeking following reliefs:-

“i. That this Hon'ble Court be pleased to issue a writ of certiorari or any other appropriate Writ/ order/ direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner case and after going into the



validity and legality thereof to quash and set aside the impugned order-in-appeal dated 02.05.2022 issued vide memo number 265/Patna and the revised summary of demand issued in form GST APL – 04 dated 04.05.2022 (Annexure – 1 Series); Impugned order-in-original dated 19.06.2019 and the summary of order issued in form GST DRC – 07 dated 19.06.2019 (Annexure - 2 Series) and impugned recovery notice dated 07.09.2022 (Annexure – 3);

ii. That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, to read down the provisions of Section 140(1) shall be read down in a manner that the person tax deducted under Section 41 of the BVAT Act and carried forward under the VAT return for the period April 2017 to June 2017 can be transitioned to the GST regime;

iii. That this Hon'ble Court be pleased to issue a Writ of certiorari/mandamus or any other appropriate Writ/ order/ direction under Article 226 of the Constitution of India calling for the records pertaining to the Petitioner case and after going through the facts of the Petitioner's case hold and declare that the Petitioner has correctly availed transitional credit of tax deducted under Section 41 of the BVAT Act;

iv. That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India ordering and directing the Respondent No. 2, 3 & 4 by himself, his subordinates, servants and agents, pending disposal of the present petition, not to initiate any coercive action or recovery of transitional credit, interest and penalty based on impugned order-in-appeal dated 04.05.2022 (Annexure



– 1); *Impugned order-in-original dated 19.06.2019 (Annexure – 2) and impugned recovery notice dated 07.09.2022 (Annexure – 3), and stay the same thereof till the pendency of the present petition;*
v. *For ad-interim reliefs in terms of prayer (a), (b), (c) & (d) above;*
vi. *For costs of this Petition;*
vii. *For such and other reliefs as the nature and circumstances of the case may required."*

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.

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."

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 09.12.2022, 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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