IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.187 of 2023

M/S Arjun Engicon Pvt. Ltd. R/o-J-117, P.C. Colony, Kankarbagh, Patna-20 through its director Sri Ravi Bhushan Kumar @ Ravi Bhushan age-48 years (Gender-Male) S/o Late Arjun Singh.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner cum Secretary of State Taxes, Bihar, New Secretariat, Patna.
2. The Commissioner cum Principal Secretary of Finance, Govt. of Bihar, Patna.
3. The Add. Commissioner of State Taxes (Admin.), Patna West Division, Anta Ghat, Patna.
4. The Joint Commissioner of State Taxes, Patna South Circle, Anta Ghat, Patna.
5. The Assistant Commissioner of State Tax, Patna South Circle, Anta Ghat, Patna.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Shashi Bhushan Singh, Advocate
For the Respondent/s	:	Mr.Vivek Prasad (GP-7)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 17-05-2023

The petitioner is aggrieved with a demand notice dated 11.10.2022 which he alleges is based on the reassessment order dated 10.10.2022, impugned in the writ petition and produced as Annexure-6. The petitioner was a registered dealer under the Bihar Value Added Tax Act, 2005 (for brevity "VAT Act") and the present writ petition is with respect to assessment of the year 2006-07. The petitioner had filed annual return dated 31.12.2007 for the said assessment year upon which a scrutiny was conducted and assessment order passed on 29.02.2008 which is produced as Annexure-1 series. The petitioner claims that the petitioner has not been given full credit of C-II placed before the Assistant Commissioner of Sales Tax, the Assessing Officer and that he is entitled to refund of Rs. 37,82,737/-. It was his contention that the Treasury Certificate of Rs. 67,29,609 confirming the credit in C-II would result in the refund claim raised. The petitioner alleges that he filed the refund application on 19.11.2021; obviously after about 13 years relatable to the Assessment Year 2006-07. The refund application is produced as Annexure-2 and the petitioner also approached this Court with a writ petition; disposed of by Annexure-3.

By Annexure-3 a Division Bench, as mutually agreed upon, quashed and set aside the impugned order dated 22.10.2021 of the Additional Commissioner of State Taxes

(Appeal). It was directed that the petitioner shall make himself available in the office of the Joint Commissioner of State Taxes, Patna South Circle, Patna and place the entire materials in support of his contentions, whereupon the officer was also directed to pass an appropriate order in accordance with law. The petitioner has not produced the order dated 22.10.2021, obviously in an appeal, which was set aside by Annexure-3. In any event, the petitioner claims that in compliance of the judgment an order dated 26.07.2022 was passed, produced along with Annexure-4 series.

We see from Page 28 that on 09.09.2022 the Joint Commissioner of Commercial Taxes had issued a notice to the petitioner in accordance with the directions in CWJC No. 20911 of 2021 (Annexure-3). A proposal was also attached along with Annexure-5 which is seen at Page-29. It is pursuant to this that the petitioner claims Annexure-6 having been passed for the year 2006-07, which is dated 10.10.2022, annexed as Annexure-6. The petitioner claims that the order passed is not in conformity with directions in the writ petition and that a re-assessment was done only to frustrate his claim for refund.

It has to be pertinently noticed that the refund application and the assessment orders are two separate proceedings. The petitioner's claim before this Court in the earlier writ petition filed, disposed of by Annexure-3, as we understand is from an appellate order. The matter was directed to be considered by a Joint Commissioner based on which Annexure-5 notice was issued. We are not apprised of how the said proceedings concluded or even whether the same is pending before the authority. In so far as the assessment is concerned, the same is dated 10.10.2022. There is no appeal filed from the said order and nor it is time barred.

The contours of the jurisdiction under Article 226 of the Constitution of India to interfere with appellable orders have been 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 to adhere to principles of natural justice or where the orders and proceeding are wholly without jurisdiction and when the vires of an Act is challenged. There is no such plea made by the petitioner in the present case against Annexure-6 order.

Having not availed the statutory remedies available, the petitioner cannot seek to approach this Court under Article 226 of the Constitution to challenge an assessment order specially 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.

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. The petitioner by his own failure has not availed the appellate remedy and in that circumstance, there can be no invocation of the extraordinary jurisdiction under Article 226 of the Constitution of India.

The writ petition stands dismissed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

P.K.P./Anushka

AFR/NAFR	
CAV DATE	
Uploading Date	19.05.2023
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