IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1945 of 2023

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M/s KW and Jasim Traders a Proprietorship firm through its Proprietor Khursheed Alam, Male, aged about 27 Years, Son of Md. IItaf Hussain, Resident of Village-Bhikha, Ward No. 9, Koltola, Police Station-Forbesganj, District-Araria.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Principal Secretary Cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
3. The Additional Commissioner of State Taxes (Appeal), Purnia Division, Purnea.
4. The Assistant Commissioner of State Taxes, Forbesganj Circle, Forbesganj.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Ranjan, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC-11

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

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

3 04-04-2023 The instant writ petition has been filed under Article 226 of the Constitution of India seeking following reliefs:-

> *"(i) For issuance of a writ in the nature of certiorari for quashing the order dated 05.11.2022, passed in Appeal No. (ARN) AD1009220039858 issued by respondent no. 3, whereby the appeal preferred by the petitioner assailing the order passed by Assistant Commissioner of State Taxes, Forbesganj Circle, Forbesganj under section 73(9) of the Bihar Goods and Service Tax Act, 2017 has been held to be time barred which order is illegal and unsustainable.*
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> *(ii) For issuance of a writ in the nature of certiorari for quashing of the ex-parte order*

dated 08.01.2022 and the summary of order in form GST DRC 07 dated 08.01.2022 under Rule 142 (5) of the Bihar Goods And Services Tax Rules, 2017 passed and issued by the respondent no. 4 under section 73(9) of the Bihar Goods And Services Tax Act, 2017.

(iii) For holding and a declaration that the impugned order dated 08.01.2022 passed by the respondent No. 4 is highly cryptic, misconceived, nonspeaking and violative of principles of natural Justice.

(iv) For issuance of a writ or order or direction restraining the respondent No. 4 from making any coercive recovery of the amount in demand (tax and penalty) as contained in the order dated 08.01.2022 during pendency of the present writ application.

(v) For any other relief / reliefs to which the petitioner is found 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 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.

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

(i) Subject to deposit of a sum equal to 20 percent of the remaining amount of tax in dispute, 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. The petitioner 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. It is not in dispute that similar relief has been granted by this Court in the case of *SAJ Food Products Pvt. Ltd. vs. The State of Bihar & Others* in *C.W.J.C. No. 15465 of 2022*.

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

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

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