IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3048 of 2024

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PEC Limited, a Company, (100 percent owned by Central Govt.) having its office at Sri Jagat Kishore, Road No.- 8, Kankarbagh, Patna through one of its manager Finance namely Daman Preet Singh make aged about 38 years, Son of S. Tapishar Singh, Resident of 42 Masjid Lane Jangpura Bhogal, New Delhi- 110014

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeals), Central Division, Patna.
3. The Assistant Commissioner of State Taxes, Patna Special Circle, Patna.
4. The Joint Commissioner of State Taxes, Patna Special Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Divyam Verma, Advocate
For the Respondent/s : Mr. Vivek Prasad, Government Pleader (7)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-07-2024

The writ petition is filed against Annexure-P/5 order dismissing the appeal on two grounds, one that no delay condonation application was filed and the other that 10% of the disputed tax has not been paid.

2. The learned Counsel for the petitioner submits that the appeal was filed within the extended period of limitation. There was also a Circular No.53/2023 dated 02.11.2023, which provided a delayed appeal to be filed upto 31.01.2024, if 12.5% of the disputed tax is paid. The learned Counsel submits that

subsequently, recovery has been made far in excess of the 12.5%, in which circumstance, the appeal may be restored and allowed to be disposed of on merits.

3. The learned Government Advocate on the other hand submits that there is no provision by which the deposit of amounts required for maintaining the appeal can be waived. The pre-deposit having not been made and also no satisfactory explanation having been given for the delay, there can be no restoration of the appeal.

4. The order which was appealed against was dated 17.02.2023, and in such circumstances, under Section 107 of the B.G.S.T. Act, an appeal ought to have been filed within three months i.e. by 17.05.2023 or within one month there from i.e. by 17.06.2023, with a satisfactory explanation for the delay occasioned.

5. Admittedly, the appeal was filed on 26.05.2023 within the extended period of limitation, however, there was no explanation for the delay occasioned. Merely because the petitioner is a Government company, the assessee cannot be absolved from the liability to explain the delay before the Tribunal and satisfy it as having occurred *bonafide*.

6. Further, a pre-deposit of 10% of the disputed tax amount is required under the enactment; which also was not

complied with and there is no exemption as such, with respect to a Government company.

7. The appeal was dismissed on 17.07.2023, later to that, Circular No.53/2023 dated 02.11.2023 was issued by the Central Board of Indirect Taxes and Customs. This permitted a window, for the assessees who have failed to challenge orders prior to 31.03.2023, by depositing an additional amount of 2.5% for the purpose of maintaining an appeal. Admittedly, the assessee did not avail of such remedy also.

8. At this stage, there can be no absolution of the assessee either from the fact that the pre-deposit was not made and also from satisfying the Tribunal about the delay occasioned.

9. We find absolutely no reason to interfere with the appellate order and dismiss the appeal.

10. The writ petition stands dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30.07.2024
Transmission Date	N/A