IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3374 of 2024

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M/S Aditya Enterprises through its proprietor Sushil Kumar, male aged 46 years, son of Late Kishun Prasad, resident - B/53, Kankarbagh, P C Colony, P.S. Kankarbagh District - Patna - 800020, Bihar.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance (Department of Revenue), Government of India, New Delhi.
2. The Under Secretary, Ministry of Finance (Department of Revenue), Government of India, New Delhi.
3. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
4. The Principal Secretary, Department of Finance, Government of Bihar, Patna.
5. The Joint Commissioner State Tax (J.C.S.T.) Patna West Patna.
6. The Assistant Commissioner State Tax, South Circle Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Uday Prasad Singh, Advocate
For the UOI	:	Dr. Krishna Nandan Singh (ASG)
		Mr. Anshuman Singh Sr. SC, CGST&CX
For the State	:	Mr. Vikash Kumar SC-11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-02-2024

The writ petition is filed against the order of assessment produced as Annexure-1 dated 24.02.2023. The petitioner, admittedly, has an appellate remedy and it is not clear as to whether an appeal was filed and the same is pending or disposed of.

2. In paragraph no. 14, it is stated that the appeal has

been disposed of affirming the assessment order, while relief (B) claims for a direction to consider the appeal and set aside the assessment order. If an appeal is filed, necessarily it has to be considered, if the same is filed within the period of limitation, on merits. There can be no contention taken that the petitioner should be allowed to file an appeal, at this stage, since the period of limitation is long over.

3. Section 107 of the Bihar Goods and Sevices Tax Act, 2017("BGST Act" hereafter) permits an appeal to be filed within three months and also apply for delay condonation with satisfactory reasons within a further period of one month. Here, the order impugned in the appeal was dated 24.02.2023. An appeal was to be filed on or before 23.05.2023 and if necessary with a delay condonation application with one month thereafter. In the above circumstances, we find no reason to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India, especially since it is not a measure to be employed where there are alternate remedies available and the assessee has not been diligent in availing such alternate remedies within the stipulated time. The law favours the diligent and not the indolent.

4. We also notice the contours of the jurisdiction under

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

5. In the above, circumstances, this Court cannot invoke the extraordinary jurisdiction under Article 226 of the Constitution of India to permit filing of an appeal beyond the period provided under the statue.

6. We find absolutely, no reason to entertain the writ petition, and dismiss the same.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.02.2024
Transmission Date	NA