IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4563 of 2024

M/S Aditya Enterprises through its Proprietor Sushil Kumar, male aged about 46 Years, Son of Sri Krishna Prasad, Resident of -B/53, Kankarbagh, P.S. Colony, P.S. Kankarbagh Distirct-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.
7. The Assistant Comissioner State Tax, South Circle Patna.

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr. Uday Prasad Singh, Advocate
For the Respondent/s : Mr. Standing Counsel (11)

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

Date : 27-03-2024

The writ petition is filed against the order dated 01.12.2021 passed by the Assistant Commissioner of State Tax, South Circle, Patna, Annexure-1. There is no appeal filed against the said order. Section 107 of the Bihar Goods and Services 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. We have to take into account the saving of limitation granted by the Hon'ble Supreme Court in ***Suo Motu Writ Petition (C) No. 3 of 2020, Cognizance for Extension of Limitation, In Re (2021) 5 SCC 452***. Therein, due to the pandemic situation limitation was saved between 15.03.2020 till 28.02.2022. It was also directed that an appeal could be filed within ninety days from 01.03.2022. Hence, an appeal could have been filed on or before 29.05.2022, which provision was not availed by the petitioner herein. The Hon'ble Supreme Court also declared that if a longer period than 90 days is provided in a Statute, then that longer period will apply. In the BGST Act, u/s 107(4) there is a provision for condonation of delay, if the appeal is filed delayed, within one month of expiry of limitation. Even if that be deemed to be applicable then the appeal ought to have been filed by 28.06.2022.

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

3. 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.

4. In the above circumstances, we find no reason to invoke the extraordinary jurisdiction under Article 226, 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.

5. The law favours the diligent and not the indolent. The delay stands against the petitioner.

6. The writ petition hence would stand dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.03.2024
Transmission Date	