IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4017 of 2024

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M/s Aditya Enterprises through its proprietor Sushil Kumar, male aged about 46 years, son of Sri Krishna Prasad, resident of -B/53, Kankarbagh, PC 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 Respondent/s	:	Dr. K.N.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: 04-03-2024

The petitioner in the above writ petition challenges the demand notice dated 27.12.2020, pursuant to the assessment order passed on 27.12.2020, respectively produced in the writ petition as Annexure-1 and 2. The petitioner assessee does not have a case that the assessment order was not served on him as required under law. Despite the pleading that an appeal has been filed, the learned counsel for the petitioner submits that no appeal was filed.

2. The petitioner had a statutory remedy by way of an appeal under Section 107 (4) of the Bihar Goods and Services Tax Act. The aforesaid provision requires an appeal to be filed within a period of three months and upon delay, to be filed within a further period of one month; which could also be considered if there is satisfactory explanation for the delay occasioned. The petitioner has not availed the remedy and at this point of time, cannot seek to avail the appellate remedy for reason of the limitation period having expired long prior.

3. The Hon’ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020**, In Re: Cognizance For Extension of Limitation, 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 30.05.2022, 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. Hence, a delayed appeal could also have been filed on or before 30.06.2022.

4. The present writ petition is filed on the demand notice being issued, which is not permissible when there was an alternate efficacious remedy, which was not availed by the petitioner for reason of his own default. There are specific contours for invocation of the extra ordinary remedy under Article 226 of the Constitution of India, as has been delineated in the **State of H.P & Ors. v. Gujarat Ambuja Cement Limited & Anr.; (2005) 6 SCC 499**.

5. We find no such ground existing and in any event the attempt of the petitioner to bypass the appellate remedy, which he chose to not avail of, cannot be countenanced. We, hence, dismiss the writ petition *in limine*.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

aditya/-

AFR/NAFR	
CAV DATE	
Uploading Date	06.03.2024.
Transmission Date	