IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4841 of 2024

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Suraj Kumar Son of Late Binod Prasad Sah Resident of Mohalla-Parao Pokhar Lane No.4, Shankarpuri, Police Station-Kaji Mohaammadpur, District-Muzaffarpur.

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary-Cum-Commissioner of State Tax, Bihar having its Office at Vikas Bhawan, Bailey Road, Patna, Bihar,
2. The Additional Commissioner of State Taxes (Appeal), Tirhut Division, Muzaffarpur, Bihar.
3. The Assistant Commissioner of State Tax, Muzaffarpur East, Tirhut Division, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Parijat Saurav, Advocate
For the Respondent/s	:	Mr. Vivek Prasad, GP-7

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

Date : 02-04-2024

The petitioner is aggrieved with the non-constitution of the Tribunal which as of now hinders his appeal before the Tribunal, as provided under Section 112 of the Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as the 'BGST Act' in short). The petitioner was served with an assessment order at Annexure-3 series which is dated 27.01.2021. The assessee filed an appeal which was also dismissed as per Annexure-8 dated 16.10.2023. The total tax amount was Rs. 1,69,12,290/- which has now been fully recovered by reversal from the electronic credit ledger. What remains is the penalty and interest imposed as per the same order and it was confirmed in the appellate order. Section 112(8) of the BGST Act is extracted hereunder:

> *"(8) No appeal shall be filed under sub-section (1), unless the appellant has paid-*
>
> *(a) in full, such part of the amount of tax, interest, fine, fee and penalty from the impugned order, as is admitted by him, and*
>
> *(b) a sum equal to twenty per cent. of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, [subject to a maximum of fifty crore rupees,] in relation to which the appeal has been filed"*

2. In appeal, the petitioner has to pay the admitted amounts and 20% of the tax in dispute. The admitted tax has been paid and the petitioner does not admit the further levy of tax or the penalty and interest. Even the disputed tax has already been recovered by the Department by way of reversal from the electronic credit ledger. Hence, there is no question of deposit of 20% of the disputed tax, the full amount of which has already been recovered. What remains is the penalty and interest which the petitioner is

not liable to deposit as per the statutory provision. The petitioner disputes the liability and seeks remedy of an appeal before the Tribunal which has not been constituted till now.

3. Learned Government Advocate had a contention that tax includes penalty and interest also. We have specifically noticed Section 112(8) of the BGST which is extracted above. In Clause-(a) the condition for maintaining an appeal is the payment of the entire admitted tax, interest, fine, fee and penalty. By Clause (b) there is a further condition provided that a sum equal to 20 per cent of the remaining amount of tax in dispute, in addition to the amount paid under Sub-section (6) of Section 107 has also to be paid for an appeal to be maintained. Hence, while the admitted tax, interest, fine, fee and penalty was to be deposited as a pre-condition to maintain the appeal; it was also required that 20% of the tax in dispute; in addition to the 10% deposited at the time of first appeal, also has to be deposited.

4. If the precondition with respect to payment of admitted tax, interest, fine, fee and penalty, as also the 20

per cent of the disputed tax is paid, there is a deemed stay of further recovery as per Clause-9 of Section 112 of the BGST Act. Hence, there is no question of a proceeding being taken if the Tribunal was constituted and a proper appeal was filed after complying with the pre-condition. In such circumstance, we reject the contention of the State.

5. We direct that there shall be no recovery of penalty or interest made till the period for filing an appeal expires, after the Tribunal is constituted. If the appeal is filed, it goes without saying, the recovery shall be only after disposal of the appeal and in accordance with the appellate order.

6. The writ petition stands disposed of.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Anushka/Ranjan

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	03.04.2024
Transmission Date	NA