IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6681 of 2024

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Re Sustainability Limited having its head office at Level 11B, Aurobindo Galaxy, Hyderabad Knowledge City, Hitech City Road, Telangana-500081 and having its Industrial Unit at Plot No. 401, Khata No. 69, Mauza- Mahul, Jamalpur, Koilwar, District- Bhojpur, Bihar- 802301, through its authorized signatory namely Chandra Mani Kumar, Manager Business Operations (male, aged 43 years), S/o Shri Kameshwar Prasad Thakur, R/O Flat No. 201, Anand Awas, Road No. 2, West Judges Colony, Khagul Danapur Road, Danapur, Patna, Bihar-801503.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Joint Commissioner of State Tax, Shahabad Circle, Ara, Patna West, Bihar.
3. The Additional Commissioner of State Tax (Appeals), Patna Western Divisions, Patna.
4. Axis Bank Ltd, Arrah Branch, Lalita Complex, Jail road, Arrah, Bihar-802301.
5. The Chief Secretary, Government of Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Ms. Mayuri, Advocate Mr. Venkata Prasad Pasupuleti, Advocate Mr. Kamleshwar Pandey, Advocate
For the Respondent/s	:	Mr. Vivek Prasad, Government Pleader 7 Ms. Roona, AC to 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 : 29-04-2024

The petitioner is concerned with an appellate order passed on 26.08.2023 dismissing the appeal for two reasons; one the absence of a certified copy of the order impugned and the other for reason of delay of three days. The impugned order in the appeal was dated 06.12.2021 (Annexure-P/3).

2. 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. 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. The appeal was filed on 31.05.2022.

3. Learned Counsel for the respondents submits that the Hon'ble Supreme Court ordered 90 days and not three months, in which circumstance, calculated from 01.03.2022 the

ninety days time would expire on 29.05.2022. The appeal was filed on 31.05.2022 with two days' delay.

4. We have already noticed that the Hon'ble Supreme Court allowed any proceeding which has not been initiated to be initiated within ninety days and if the Statute permits a longer time, within that period. As per the BGST Act, the Statute specifically provides for three months to file an appeal and a further period of one month within which a delayed appeal can be filed. Hence, the three months as provided under the BGST Act has to be taken into consideration, in which circumstance, the appeal filed on 31.05.2022, is within time. Even otherwise, the two days' delay as per the order of the Hon'ble Supreme Court falls within the period when delay condonation was permissible as per the BGST Act. Finding that the appeal was filed within the time provided under the BGST Act as permitted by the Hon'ble Supreme Court, we are of the opinion that the appeal has to be considered on merits.

5. Another contention taken was regarding the certified copy not being produced. The said provision has been relaxed by the Circular produced at Annexure-P/7 in the writ petition. Since it is a procedural requirement, it has to be deemed to be a clarification issued and in such circumstance, if there is a self attested copy of the impugned order, the matter has to be

considered by the Tribunal.

6. In the above circumstances, we are of the opinion that the appeal was filed in time and was maintainable. The Appellate Authority ought to have considered the issue on merits. The Appellate Order dated 26.08.2023 (Annexure-4) is set aside. The appeal stands restored to the files of the Appellate Authority. Notice shall be issued and the appellant shall be given an opportunity of hearing after which the matter shall be disposed off on merits, by a speaking order.

7. It is submitted by the learned Counsel for the petitioner that the entire money has been recovered, the refund of which will depend upon the final orders to be passed in the appeal.

8. The writ petition stands allowed with the aforesaid directions.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	30.04.2024
Transmission Date	