IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7809 of 2024

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Anil Kumar, Son of Gopichand Prasad, Proprieter of M/S Suryance Industries, Resident of Mohalla- Maharaza Hatta, P.S.- Town, District- Bhojpur (Ara), presently resided at 2M/57 Bahadurpur Housing Colony Mahatma Gandhi Kankarbagh, Patna- 800026.

... ... Petitioner

Versus

1. The State of Bihar through Commissioner Sales Tax, Patna.
2. The Joint Commissioner, State Tax/ Sahabad Circle P.S. District- Ara.

... ... Respondent

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Appearance :

For the Petitioner/s	:	Dr. Anjani Pd. Singh, Advocate
For the Respondent/s	:	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 : 08-05-2024

The petitioner has filed the writ petition seeking defreezing of his bank account and also setting aside of the assessment order dated 04.02.2022 passed by the Assistant Commissioner State Tax, Sahabad Circle at Ara. Obviously, the bank account has been frozen for reason of the assessment order and the consequent demand raised.

2. Learned counsel for the petitioner, submits that a demand was raised only because of the E-Way Bill produced as Annexure-P/1, which has a value of Rs. 85,963/-. The petitioner's contention is that he has been carrying on the business of manufacture of Hume Pipe; which very same

industry, his father has in Tezpur (Guwahati). The petitioner's father's manufacturing unit is named "Jai Bajrangbali Industry". It is stated that the petitioner's manufacturing unit called M/s Suryansh Industries Maharaza Hatta Bhojpur (Ara), is sister concern of his father's establishment. He also contended that there was a machinery brought into the State of Bihar from Assam, which was not on any consideration failed. This machinery had to be returned for which an E-Way Bill was generated (Annexure-P/1) which is the cause for the assessment order.

3. We have looked at Annexure P/2 order, which gives a totally different picture. The petitioner is said to have carried out E-Way Bill transactions in the different months of financial year 2021, engaging in sale of goods, the taxable value of which comes to a total of Rs. 7,11,420/-. Obviously, the assessment is not based solely on Annexure-P/1 E-Way Bill.

4. Annexure P/2 indicates that the petitioner was issued with a number of show-cause notices electronically, which was not responded to. Notices were issued under Sections 61, 73(5) and 73(1) of the Bihar Goods and Services Tax Act, 2017; none of which was responded to by the petitioner. The assessment order hence was passed on 04.02.2022, as we see from the proceedings produced as Annexure P/2.

5. 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.

6. 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.

7. 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.

8. The Central Board of Indirect Taxes and Customs has by Notification No. 53 of 2023- Central Tax, dated 02.11.2023 (S.O. 4767(E)) extended the time for filing appeal against an order passed by the Proper Officer on or before 31.03.2023 under Sections 73 and 74 of the 'BGST Act'. This in fact extends the period for filing a delayed appeal beyond the one month period as provided under Section 107(4) of the 'BGST Act', on following the special procedure prescribed under the said Notification, provided an appeal was filed before 31.01.2024 and 12.5% of the balance tax due was paid. The petitioner did not avail this remedy also.

9. 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. The law favours the diligent and not the indolent. The delay stands against the petitioner. The petitioner also does not have any case set up in the writ petition which would enable us to invoke the jurisdiction under Article 226 of the Constitution of India; neither a case of violation of principles of natural

justice nor a ground of lack of jurisdiction or even a contention of abuse of process of law.

10. The writ petition hence would stand dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13-05-2024
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