IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12617 of 2023

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Mustafa Ansari Son of Sabul Miya, resident of village - Karhikala, P.S. - Basantpur, District - Siwan.

... ... Petitioner/s

Versus

1. The Union of India through the Principal Secretary, Finance Deptt. Govt. of India, New Delhi.
2. The State of Bihar through the Principal Secretary, Finance Department, Govt. of Bihar, Patna.
3. The Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
4. The Commissioner, Commissionerate, Patna - II, Division - Vaishali Division- Range-Chhapra Range, District - Vaishali.
5. The Assistant Commercial and Service Tax (ACST) Siwan.
6. The Branch Manager, State Bank of India, Branch Basantpur, P.S. Siwan, District - Siwan.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Shambhu Sharan Singh, Advocate
For the UOI	:	Dr. K.N.Singh, ASG Mr. Anshuman Singh, Sr. SC, CGST & CX Mr. Sanjiv Kumar, Advocate
For the Respondent/s	:	Mr.Vivek Prasad, GP-7 Ms. Roona, Advocate Ms. Manisha Singh, Advocate Ms. Supragya, Advocate Mr. Sanjay Kumar, Advocate
For the Resp. No. 6	:	Mr. Apurv Harsh, Advocate Mr. Prashant Bhardwaj, Advocate

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

Date : 22-03-2024

The petitioner in the above writ petition, challenges the demand order dated 27.11.2021 (Annexure-3), pursuant to a notice issued on 27.10.2021. A notice was issued as per demand order Annexure-3, which was not replied to. An appeal is provided against Annexure-3, which was also not availed of.

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)

Sharun/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	22.03.2024
Transmission Date	