

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12695 of 2024

M/s Raiyan Traders a proprietorship firm having its place of business at A.K. Market, Mahatma Gandhi Setu, Pahari, Patna-800007 through its proprietor namely Md. Imran Alam, male, aged about 42 years, son of Md. Wahabuddin resident of Phulwarisharif, Makhdum Rasti Nagar, Phulwarisharif, Patna-801505.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeals), Patna East Division, Patna.
3. The Assistant Commissioner of State Taxes, Patna City West Circle, Patna City, Patna (March 2019).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate Mr. Alok Kumar Jha, Advocate Mr. Mukund Kumar, Advocate Mr. Akash Kumar, Advocate Mr. Aditya Raman, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, Standing Counsel (11)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 28-08-2024

The issue raised in the above writ petition is as to whether on filing an appeal the ten per cent of the due amounts are to be paid from the Electronic Cash Ledger or the Electronic Credit Ledger.

2. In the present case, the petitioner paid the ten per cent amount from the Electronic Credit Ledger. The Appellate Authority by order dated 14.01.2023 rejected the appeal on the



ground that the ten per cent has to be paid from the Electronic Cash Ledger. In fact, the said position has been accepted after going into the various provisions of the Goods and Services Tax Act, 2017 (for brevity “GST Act”) by a Division Bench of this Court in *M/s Flipkart Internet Pvt. Ltd. v. The State of Bihar & Ors.* (CWJC No. 1848 of 2023 & analogous cases), decided on 19.09.2023. However, observations in Paragraphs 77 and 78 of the said judgment have been stayed on 04.12.2023 by the Hon’ble Supreme Court in *Special Leave to Appeal (C) No. 25437 of 2023*.

3. We also notice from Notification No. 53/2023 dated 02.11.2023 issued by the Ministry of Finance, Department of Revenue (Central Board of Indirect Taxes and Customs), which permitted filing of delayed appeals even beyond the period provided under Section 107 of the GST Act, that the stipulation was of paying an amount of 12.5 per cent of the amounts pending and due to be paid to the Department as against the 10 per cent prescribed by the statute. In the said Notification issued by the Central Government on the recommendation of the GST Council, it has been specifically stated that at least 20 per cent of the 12.5 per cent remaining due and payable should be paid from the Electronic Cash Ledger. Hence, even the GST Council



understood the ten per cent to be enabled for payment through the Electronic Credit Ledger.

4. We are not differing from the Division Bench judgment which being a Coordinate Bench binds us. However, we notice that the Hon'ble Supreme Court has stayed the Division Bench judgment and in such circumstances, especially since consideration of the appeal on merits is the question raised before us, we are of the opinion that pending decision of the Hon'ble Supreme Court, the appeal should be considered on merits.

5. We hence, set aside the order in appeal dated 14.01.2023 and direct the same to be considered on merits. We make it clear that the Commissioner, Commercial Taxes, Patna shall issue necessary directions for consideration of appeals when the subject matter is pending before the Hon'ble Supreme Court. There shall be no insistence for payment of the 10 per cent due and payable under Section 107 of the GST Act, from the Electronic Cash Ledger.

6. It is pointed out that in the present case, already ten per cent of the amount remaining due and payable is remitted from the Electronic Credit Ledger which would make the appeal maintainable and the Appellate Authority shall consider it on



merits.

7. The writ petition is allowed with the above directions.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

aditya/-

AFR/NAFR	
CAV DATE	
Uploading Date	29.08.2024.
Transmission Date	

