IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14554 of 2024

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M/s Maa Sunaina Construction Private Limited, a Private Limited Company incorporated under the Companies Act, 1956, and having its registered Office at 715/D, H/O Ragho Prasad, Main Road, Bhagwat Nagar, Kumharar, B.H. Colony, P.O.- B.H Colony and P.S.-Agamkuan, Patna-800026, Bihar, through its authorised Signatory and Director Namely Mr. Prem Kumar, Male, aged about 56 Years, S/o Ragho Prasad, Residing at 715/D, Main Road, Bhagwat Nagar, Kumharar, B.H. Colony, P.O.-B.H. Colony and P.S.-Agamkuan, patna-800026, Bihar.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, New Delhi-110001.
2. The State of Bihar through the Principal Secretary Cum Commissioner, Commercial Tax Department, Government of Bihar, Patna, Bihar.
3. The Assistant Commissioner State Tax, Special Circle, Patna, Bihar.
4. The Aditional Commissioner, State Tax (Appeal), Central Division, Patna, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Anubhav Khowala, Advocate
For the UOI	:	Mr.Dr. K.N. Singh (ASG)
		Mr. Anshuman Singh Sr. SC, CGST&CX
		Mr. Devansh Shankar Singh JC to ASG
For the State	:	Mr. Vivek Prasad, GP-7

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-10-2024

An amendment has been made to Section-112 of the Central Goods and Services Tax Act, 2017 substituting “twenty per cent” pre deposit to **“ten per cent”** for maintaining an appeal before the Goods and Services Tax Tribunal. The Tribunal has not yet been constituted and this Court had been granting orders based on the judgment in **SAJ Food Products Pvt. Ltd. vs. The State of Bihar & Others** in **C.W.J.C. No. 15465 of 2022,** allowing the assessee to deposit twenty per cent of the disputed amount of tax, till the Tribunal is constituted and an appeal is filed also allowing stay of recovery.

2. As of now pre-deposit has been reduced to **"ten per cent"** but however, the same is made effective only from 01.11.2024. It is an admitted position that the GST Tribunals have not been constituted as yet and there is no possibility of an appeal being filed prior to 01.11.2024. In such circumstance we direct that the assessee on payment of "**ten per cent"** of the tax amounts in dispute shall be entitled to stay of recovery till the Tribunal is constituted and an appeal is filed within such term as provided therein.

3. This Court is, therefore, inclined to dispose of the instant writ petition in the following terms:-

(i) Subject to deposit of a sum equal to 10 percent of the amount of tax in dispute, if not already deposited, in addition to the amount deposited earlier under Sub-Section (6) of Section 107 of the B.G.S.T. Act, the petitioner must be extended the statutory benefit of stay under Sub-Section (9) of Section 112 of the B.G.S.T. Act. The petitioner cannot be deprived of the benefit, due to non-constitution of the Tribunal by the respondents themselves. The recovery of balance amount, and any steps that may have been taken in this regard will thus be deemed to be stayed.

(ii) The statutory relief of stay, on deposit of the statutory amount, however in the opinion of this Court, cannot be open ended. For balancing the equities, therefore, the Court is of the opinion that since order is being passed due to non-constitution of the Tribunal by the respondent-Authorities, the petitioner would be required to present/file his appeal under Section 112 of the B.G.S.T. Act, once the Tribunal is constituted and made functional and the President or the State President may enter office. The appeal would be required to be filed observing the statutory requirements after coming into existence of the Tribunal, for facilitating consideration of the appeal.

(iii) In case the petitioner chooses not to avail the remedy of appeal by filing any appeal under Section 112 of the B.G.S.T. Act before the Tribunal within the period which may be specified upon constitution of the Tribunal, the respondent- Authorities would be at liberty to proceed further in the matter, in accordance with law.

(iv) If the above order is complied with and a sum equivalent to 10 per cent of the remaining amount of the tax in dispute is paid then, if there is any attachment of the bank account of the petitioner pursuant to the demand, the same shall be released.

4. With the above liberty, observation and directions, the writ petition stands disposed of.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.10.2024
Transmission Date	NA