IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14953 of 2024

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Nitish Kumar Jha Son of Sujeet Jha, Resident of Ward No. 01, Purbari Tol, Nahas Rupauli, P.S.-Patauna, District-Madhubani, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of State GST, New Secretariat, Patna, Bihar.
2. The Joint Commissioner of State Tax, Madhubani, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Vikas Kumar Jha, Advocate

For the Respondent/s : Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 01-10-2024

The petitioner is before this Court challenging the cancellation of registration dated 31.07.2021 at Annexure-P/2, before which a show-cause notice was issued on 19.07.2021, which was not replied to. An appeal is provided from Annexure-P/2, which was also not availed of.

2. In the BGST Act, u/s 107(4) there is a provision for filing an appeal within three months of the order and a further provision of condonation of delay, if the appeal is filed delayed, within one month of expiry of limitation. The appeal ought to have been filed on or before 31.10.2021 or before 31.11.2021 with a delay condonation application.

3. The petitioner has not availed such remedy and at this point of time, cannot seek to avail the appellate remedy for reason of the limitation period having expired long prior.

4. We notice that the Hon'ble Supreme Court saved the limitation 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.

5. Further, the Government had come out with an Amnesty Scheme by Circular No. 3 of 2023 by which the registered dealers, whose registrations were cancelled, were permitted to restore their registration, on payment of all dues,

between 31.03.2023 to 31.08.2023. The petitioner did not avail of such remedy also.

6. The petitioner being not a registered dealer, there was no monitoring of his activities by the Department in the intervening period. There is no way to ascertain as to whether there was any transaction carried out during the said period. It is also a fact that the petitioner has neither availed of the appellate remedy nor the Amnesty Scheme which was made applicable. The petitioner also does not in the memorandum of writ petition controvert the allegation in the show cause notice that no returns were filed for three consecutive periods.

7. The law favours the diligent and not the indolent. The delay stands against the petitioner.

8. Hence, we dismiss the writ petition; declining exercise of discretion.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Anushka/-

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CAV DATE	
Uploading Date	04.10.2024
Transmission Date	