IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17769 of 2024

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M/S Sain Enterprises a Proprietorship Firm having GSTIN-10AMDPK3074D1ZQ and its office at 1st Floor, Shop No. 104, Govinda Complex, Govind Mitra Road, Bankipore, Patna, Bihar 800004 through its proprietor Anil Kumar, Gender-Male, aged about 62 years, son of Late Deo Nandan Prasad, Resident of Road No. 5A, Near Shiv Parvati Committee Hall, Postal Park, Patna, P.S.-Jakkanpur, P.O.-G.P.O., District-Patna, Bihar-800001.

... ... Petitioner/s

Versus

1. The Union of India through the Finance Secretary, Department of Revenue, Govt. of India, New Delhi.
2. The Government of India, Ministry of Finance (Department of Revenue), through the Director, CBIC, New Delhi.
3. The State of Bihar through The Principal Secretary, State Tax, Bihar, Patna having its office at Kar Bhawan, Patna.
4. The Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
5. The Joint Commissioner of State Tax, Kadam Kuan Circle, Patna, Bihar.
6. The Assistant Commissioner of State Tax, Kadam Kuan Circle, Patna, Bihar.
7. The Additional Commissioner of State Tax, Appeal, East Division, Patna, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Bijay Kumar Gupta, Advocate
For the Respondent/s	:	Mr.Dr. K.N. Singh (ASG)
		Mr. Anshuman Singh Sr. SC, CGST&CX
		Mr. Amarjeet, JC to ASG
		Mr. Abhijeet Gautam, JC to ASG

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-12-2024

The petitioner is concerned with Annexure-P/3 order which was challenged on the ground of delay. The petitioner's contention was against extension of limitation as also no opportunity of personal hearing having been afforded under Section 75(4) of the BGST Act.

2. The contentions raised in the present writ petition on the ground of limitation has been answered in **C.W.J.C. No. 4180 of 2024** and analogous cases, **M/s Barhonia Engicon Private Limited v. The Union of India and Ors.** vide judgment dated 27.11.2024; against the petitioner.

3. So far as personal hearing is concerned, we find that Annexure-P/3 has been produced by the petitioner, which indicates a show cause notice affording opportunity of personal hearing.

4. In such circumstance, we do not find that the provisions of Section 75(4) of the BGST Act has been violated.

5. 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.

6. As of now pre-deposit has been reduced to **“ten per cent”** effective only from 01.11.2024. It is an admitted position that the GST Tribunals have not been constituted as yet. 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 time as provided therein.

7. 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.

8. With the above liberty, observation and

directions, the writ petition stands disposed of.

(K. Vinod Chandran, CJ)

(Nani Tagia, J)

ranjan/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	
Transmission Date	NA