IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19078 of 2024

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M/S Goswami Security Service Private Limited, a Private Limited Company having GSTIN--10AADCG4340B2Z1 and its office at. 3rd Floor, Hotel Janvi International, Road No.1, Juran Chappra, PO- Muzaffarpur, PS-Town Thana, Muzaffarpur, Bihar-842001 through its Authosied Director Kumar Udhaw Goswami Gender-Male, aged about 50 years, Son of Sri Bishwanath Goswami, Resident of Ward No. 12, Band Road, Sikandarpur Kundal, PO-MIT, PS- Brahmpura, Muzaffarpur Bihar- 842001.

... ... Petitioner/s

Versus

1. The State of Bihar through The Principal Secretary, State Tax, Bihar, Patna having its office at Kar Bhawan, Patna.
2. The Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
3. The Additional Commissioner of State Tax, (I.B) Tirhut Division Muzaffarpur, Bihar.
4. Assistant Commissioner of State Tax, Muzaffarpur, West Circle-2, Bihar.
5. Deputy Commissioner of State Tax, Muzaffarpur, West Circle-2, Tirhut, Bihar.
6. The Additional Commissioner of State Tax, (Appeal) Tirhut Division, Muzaffarpur, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bijay Kumar Gupta, Advocate
		Mr. Manish Kumar, Advocate
		Mr. Sunil Kumar Choudhary, 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 : 19-12-2024

The instant writ petition has been filed under Article 226 of the Constitution of India seeking multifarious reliefs.

2. The petitioner essentially is desirous of availing

statutory remedy of appeal against the impugned order before the ***Appellate Tribunal*** (hereinafter referred to as ***"Tribunal"***) under Section 112 of the Bihar Goods and Services Tax Act (hereinafter referred to as "B.G.S.T. Act").

3. However, due to non-constitution of the ***Tribunal***, the petitioner is deprived of his statutory remedy under Sub-Section (8) and Sub-Section (9) of Section 112 of the B.G.S.T. Act.

4. Under the circumstances, the petitioner is also prevented from availing the benefit of stay of recovery of balance amount of tax in terms of Section 112 (8) and (9) of the B.G.S.T Act upon deposit of the amounts as contemplated under Sub-section (8) of Section 112.

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"** and the same is made effective 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)

(Partha Sarthy, J)

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AFR/NAFR	
CAV DATE	N/A
Uploading Date	20.12.2024
Transmission Date	N/A