IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.156 of 2024

==

Vikash Kumar through its Proprietor Vikash Kumar, Son of Prakash Yadav, Resident of Rahi Tola Gwalpara Ward no 1, Anchal Gwalpara, P.S.-Gwalpara, District-Madhepura, Bihar.

... ... Petitioner/s

Versus

1. The Union of India through the Commissioner of Central GST, Patna.
2. Superintendent, Central GST, Madhepura, Purnea, Bihar
3. Joint Commissioner CGST and (Appeal), Patna.

... ... Respondent/s

==

Appearance :

For the Petitioner/s	:	Mrs.Archana Sinha @ Archana Shahi, Advocate
For the Respondent/s	:	Dr. K.N.Singh, A.S.G.
		Mr. Anshuman Singh, Sr. SC, CGST & CX

==

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-01-2024

The petitioner is aggrieved with the cancellation of registration against which an appeal was filed which was rejected as delayed on 15.11.2023 at Annexure-2. A show cause for cancellation of registration was issued on 19.11.2018 and the order was passed on 05.04.2019, both the orders are produced as Annexure-1.

2. A reading of the appellate order would indicate that an online appeal was filed on 28.11.2021 and a hard copy was submitted only on 17.10.2023, hence, the Appellate Authority

considered, the appeal having been instituted properly, only on 17.10.2023, based on which, the appeal was rejected for reason of gross delay.

3. We see from Rule 108 of the CGST Rules, 2017 that an appeal to the appellate authority under Section 107 is to be filed in Form GST APL-01 along with relevant documents either electronically or otherwise, as notified by the Commissioner. Hence, an electronic filing cannot be considered to be an improper institution of an appeal.

4. In this context, Section 107 of the Bihar Goods and Services Tax Act, 2017 ("BGST Act" hereafter) permits an appeal to be filed within three months and also apply for delay condonation with satisfactory reasons within a further period of one month. We also have to take into account the saving of limitation granted by the Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020, In Re: Cognizance For Extension of Limitation**, wherein, 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. Here, the order impugned in the appeal was dated 05.04.2019. An appeal was to be filed on or before 30.06.2022 as permitted by the Hon'ble Supreme

Court and if necessary, with a delay condonation application within one month thereafter. The present appeal was filed only on 28.11.2021, when the limitation stood extended by the Hon'ble Supreme Court as per **Suo Motu Writ Petition (C) No. 3 of 2020**. In such circumstances, there could not have been any rejection made of the appeal for reason of the delay occasioned.

5. We, hence, set aside the order in appeal at Annexure-2 and restore the appeal to the files of the Appellate Authority. The petitioner shall appear before the Appellate Authority on 05.02.2024 and the Appellate Authority, either on the said date or another date fixed for hearing, shall hear the matter and pass a speaking order.

6. The writ petition stands disposed of.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	12.01.2024
Transmission Date	