

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11842 of 2023

M/s S K Construction and Company, an Indian Partnership Firm constituted under the Indian Partnership Act, 1932, having its Principal Place of Business at NH 57, Ranipur, Darbhanga, Bihar, 846005, Indian having GSTIN- 10AB-JFS7734F1Z9 represented by its Partner Shri Diwakar Prasad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner of State Tax having its office at Vikas Bhawan, Bailey Road, Patna.
2. Union of India, through the Secretary, Ministry of Finance, Department of Revenue, 128-A/North Block, New Delhi.
3. Principal Chief Commissioner of CGST and Central Excise, having its office at Central Revenue Building, (Annexe), Bir Chand Patel Marg, Patna.
4. Principal Commissioner, Patna II, CGST and Central Excise having its office at Central Revenue Building, (Annexe), Bir Chand Patel Marg, Patna.
5. Additional Commissioner of State Tax (Appeal), Darbhanga Division, Darbhanga, Bihar.
6. Deputy Commissioner of state Tax, Darbhanga Division, Darbhanga, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Dinesh Kumar, Advocate Mr. Amar Kumar, Advocate
For the Respondent/s	:	Mr. Vikash Kumar (Sc 11)
For the UOI	:	Dr. Krishna Nandan Singh, ASG Mr. Anshuman Singh, CGC Mr. Abhijeet Gautam, JC to ASG Ms. Prakritita Sharma, JC to ASG

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

Date : 31-10-2023

The petitioner challenges the appellate order dated 11.01.2023 (Annexure-10), which dismissed the appeal for non-prosecution. The appeal was filed in time and the appellate authority for the reason of the absence of the petitioner or



the authorized representative rejected the appeal. The ground stated of mismatch being in existence is a cursory one without any discussion of the facts and figures.

2. We have already held in *Purushottam Stores vs. The State of Bihar & Ors; CWJC No. 4349 of 2023* decided on 25.04.2023; looking at the provisions of the Bihar Goods and Services Tax Act especially sub-sections (8), (9), (10), (11) and (12) of Section 107 of the Act, that the Appellate Authority has a duty and an obligation under the statute to look into the merits of the matter and also examine the grounds raised by the appellant, even if there is no presence recorded of the appellant before the Appellate Authority and decide the issue on merits. The Appellate Authority by dismissing the appeal without any reasoning and also finding the appellant having not presented the appeal properly would be abdicating its powers especially looking at the provisions where the Appellate Authority has been empowered to conduct such further enquiry as found necessary to decide the appeal, which decision also shall be on the points raised.

3. We, hence, set aside the appellate order dated 11.01.2023 produced at Page 84 (Annexure-10) and direct the restoration of appeal before the Appellate Authority.



4. The petitioner shall appear before the Appellate Authority on 09.11.2023. The Appellate Authority or its office shall fix a date of hearing on the said date, with due acknowledgment taken from the appellant; if the date of hearing is issued from the office, proceed with the hearing on the date fixed and dispose of the appeal on merits within three months from the date of last hearing. We also direct the petitioner to cooperate in the hearing of the appeal and even if there is absence of the appellant or his authorized representative on the date of hearing, the Appellate Authority shall consider the appeal on merits and pass a speaking order.

5. The writ petition stands allowed with the above direction.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

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CAV DATE	
Uploading Date	01.11.2023
Transmission Date	

