

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14381 of 2022

Gammon Engineers and Contractors Pvt. Ltd. an incorporated company having its branch office Upasana, Ground Floor, House of Shri Pashupati Nath Paras, P.S.- Airport, Kautilya Nagar, BV College, Patna- 80014 through its authorized representative namely Rajiv Kumar male, aged about 39 years son of Shri Arun Kumar Shahi resident of Flat No. 302, Premshree Residency, Road No. 3E, New Patliputra Colony, Patna- 800013.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeals) Central Division, Patna.
3. The Assistant Commissioner of State Taxes, Patliputra Circle, Patna. (Financial year 2020-2021).

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Gautam Kumar Kejriwal with Mr. Atal Bihari Pandey, Mr. Alok Kumar Jha, Mr. Mukund Kumar, Advocates
For the State	:	Mr. Ram Krishna with Mr. Akash Chaturvedi, AC to SC-11

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER
(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

4 23-03-2023 The instant writ petition has been filed under Article 226 of the Constitution of India seeking following reliefs:-

“a) For issuance of writ in the nature of certiorari for quashing of the order dated 02.03.2022 issued vide memo number 112/Patna by the respondent number 2 (hereinafter referred to as the



appellate authority for short) whereby the appeal preferred by the petitioner under section 107 of the central goods and services tax act 2017 (hereinafter referred to as the central act 2017 for short) and Bihar goods and services tax act 2017 (hereinafter referred to as the Bihar act 2017 for short) has been rejected;

b) For issuance of writ or order in the nature of certiorari for quashing of the order dated 24.02.2021 passed by the respondent number 3 (hereinafter referred to as the assessing authority short) under section 73 of the central act 2017 and Bihar act 2017 and also for quashing of the summary of order issued in form GST DRC-07 dated 23.02.2021 and also quashing of the rectification order dated 24.02.2021 issued in form GST - 08 dated 24.02.2021 passed by the same respondent assessing authority;

c) For further restraining the respondents from taking any coercive action against the petitioner for recovery of the



amount of tax and interest in terms of the impugned orders during the pendency of the present writ application;

d) For further holding and a declaration that mere absence of auto populated GST R-2A resulting in mismatch with the return filed by the petitioner in form GST R-3B cannot deprive the petitioner from the benefit of input tax credit;

e) For further holding and a declaration that the petitioner cannot be deprived of the benefit of input tax credit for the defaults committed by the supplier/seller as the taxes paid by the petitioner to such supplier/seller constitutes due discharge of liability from the ends of the petitioner and also that such payment of tax to the supplier/seller is as good as payment of tax to the government insofar as the true purport and meaning of section 16 (2) (c) of the central act 2017 and Bihar act 2017 is concerned;

f) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and



circumstances of this case.”

The petitioner 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").

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.

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.

The respondent State authorities have acknowledged the fact of non-constitution of the ***Tribunal*** and come out with a notification bearing Order No. 09/2019-State Tax, S. O. 399, dated 11.12.2019 for removal of difficulties, in exercise of powers under Section 172 of the B.G.S.T Act which provides that period of limitation for the purpose of preferring an appeal before the ***Tribunal*** under Section 112 shall start only after the date on which the President, or the



State President, as the case may be, of the ***Tribunal*** after its constitution under Section 109 of the B.G.S.T Act, enters office.

Considering the facts and circumstances noted above, this Court in the case of ***Angel Engicon Private Limited vs. the State of Bihar & Anr.*** passed in ***C.W.J.C No. 1920 of 2023*** has disposed of the writ petition with certain observations and directions, allowing certain liberty to the petitioner, which reads as follows:

"If the petitioner makes a deposit of a sum equal to 20 percent of the remaining amount of tax in dispute, in addition to the amount deposited earlier under Sub-Section (6) of Section 107 of the B.G.S.T. Act, then the petitioner must be extended the statutory benefit of stay under Sub-Section (9) of Section 112 of the B.G.S.T. Act, for he 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.

The statutory relief of stay on



deposit of the statutory amount, 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.

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.



With the above liberty, observation and directions, the writ application stands disposed of."

There is an additional fact in the instant case, as asserted by the petitioner, that in terms of the liberty granted under earlier order dated 10.11.2022, in these proceedings, he has already deposited 20 percent of the remaining amount of tax in dispute.

This Court is, therefore, inclined to dispose of the instant writ petition also in the following terms:-

(i) Subject to verification of the fact of deposit of a sum equal to 20 percent of the remaining amount of tax in dispute, or deposit of the same, 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, for he 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, 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.

With the above liberty, observation and directions, the writ application stands disposed of.

(Chakradhari Sharan Singh, ACJ)

(Madhuresh Prasad, J)

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