

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9975 of 2023

M/s Punit Kumar Choubey aged about 29 years S/O Shailendra Kumar Choubey (GSTIN/Temp ID/UIN10BCVPCI404NIZT), Resident of ward no. 7, Mohalla - Shanti Nagar, Police Station and post office - Bhabhua, District - Kaimur (Bhabhua), Pin Code - 821101.

... .. Petitioner/s

Versus

1. The Commissioner, Commercial Tax, Patna, Bihar.
2. Joint Commissioner of State Tax Bhabhua Anchal, Bhabhua District - Kaimur.
3. Additional Commissioner (Appeal) of State Tax, Magadh Pramandal, Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Achhaibar Singh, Advocate
For the Respondent/s : Mr. Raghwanand, GA-11
Mr. Sanjay Kumar Tiwari, AC to GA-11

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-08-2023

The writ petition is filed against an assessment order and the rejection of an appeal filed, on the ground of limitation. It is urged that the assessment order itself was an *ex parte* order.

2. A detailed counter affidavit has been filed by the State, wherein it is pointed out that there was a notice issued and repeated opportunities given to the assessee for putting forth their explanation of the excess input tax claimed; which however was not availed of by the assessee. The assessee had



claimed input tax credit respectively of Rs. 3,78,624.23/- each under CGST and SGST Act. However, the GSTR-2A made available by the supplier of the petitioner-assessee showed only a credit of Rs. 93,825.77/-. At first an electronic notice was uploaded in the portal, which was dated 17.08.2021 to which no response was received. Reminders were made repeatedly on 06.09.2021 and 16.09.2021, which were also not responded to. Finally a show-cause notice along with a summary in Form-GST DRC-01 dated 08.11.2021 was issued to the petitioner, fixing 07.12.2021 as the last date of hearing. The petitioner failed to appear and the order was passed on 10.12.2021 under Section 73(9) of the BGST Act.

3. The summary of the order was also served on the petitioner electronically on 10.12.2021 by uploading in the common portal. The petitioner filed an appeal with gross delay of one month nine days.

4. In the present case, the assessment order was dated 10.12.2021 and the appeal was filed only on 10.07.2022.

5. The Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020**, In Re: Cognizance For Extension of Limitation 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. Hence, an appeal could have been filed on or before 29.05.2022, which provision was not availed by the petitioner herein. The Hon'ble Supreme Court also declared that if a longer period than 90 days is provided in a Statute, then that longer period will apply. In the BGST Act, u/s 107(4) there is a provision for condonation of delay, if the appeal is filed delayed, within one month of expiry of limitation. Even if that be deemed to be appealable then the appeal ought to have been filed by 28.06.2022. The appeal is said to have been filed only on 10.07.2022, after 12 days from the date on which even the limitation period, as stipulated by the Hon'ble Supreme Court, expired.

6. We also notice the contours of the jurisdiction under Article 226 of the Constitution of India to interfere with appellable orders laid down by the Hon'ble Supreme Court in **State of H.P & Ors. v. Gujarat Ambuja Cement Limited & Anr.; (2005) 6 SCC 499**. It has been held that if an assessee approaches the High Court without availing the alternate remedy, it should be ensured that the assessee has made out a strong case or that there exists good grounds to invoke the extraordinary jurisdiction. While reiterating that Article 226 of



the Constitution confers very wide powers on the High Court, it was clarified that nonetheless the remedy of writ is an absolutely discretionary remedy. The High Court, hence, can always refuse the exercise of discretion if there is an adequate and effective remedy elsewhere. The High Court can exercise the power only if it comes to the conclusion that there has been a breach of principles of natural justice or due procedure required for the decision has not been adopted. The High Court would also interfere if it comes to a conclusion that there is infringement of fundamental rights or where there is failure of principles of natural justice or where the orders and proceeding are wholly without jurisdiction or when the vires of an Act is challenged. There is no such plea made by the petitioner in the present case against the impugned order.

7. Having not availed the statutory remedies available, the petitioner cannot seek to approach this Court under Article 226 of the Constitution of India to challenge an assessment order especially with respect to the computation of the turn over and the determination of the taxable turnover and the tax payable, as arrived at by the Assessing Officer. In the BGST Act, an appellate remedy is provided under Section 107, which has to be availed within a period of three months or with



a delay within a further period of one month.

8. It is trite law that when there is a specific period for delay condonation provided, there cannot be any extension of the said period by the Appellate Authority or by this Court under Article 226 of the Constitution.

9. The petitioner by his own failure has not availed the appellate remedy and in that circumstance, there can be no invocation of the extraordinary jurisdiction under Article 226 of the Constitution of India. We also find that there is no jurisdictional error, violation of principles of natural justice or abuse of process of Court averred or argued by the petitioner in the above writ petition. The gross delay also stands against the petitioner.

10. As such, the writ petition would stand dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

aditya/-

AFR/NAFR	
CAV DATE	
Uploading Date	18.08.2023.
Transmission Date	

