

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6457 of 2023

M/s Friends Mobile through its Proprietor Md. Quadir Khan, Male, aged about 32 years, Son of Shakil Khan, Resident of Near Sadrunia Masjid, Minhaj Nagar, Ward No. 2, Phulwari, Patna District- Patna, Bihar- 801505.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner of Commercial State Taxes, New Secretariat, Patna.
2. Assistant Commissioner, State Taxes, Patna East, Patna, Bihar.
3. Additional Commissioner, State Taxes, Patna East, Patna, Bihar.

... .. Respondent/s

Appearance :

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| For the Petitioner/s | : | Mrs.Archana Sinha, Advocate |
| For the Respondent/s | : | Mr.P.K. Shahi (AG) |
| | | Mr. Vikash Kumar, SC-11 |

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 06-12-2023

The issue raised in the above writ petition is as to whether on filing an appeal the ten per cent of the due amounts are to be paid from the Electronic Cash Ledger or the Electronic Credit Ledger.

2. In the present case, the petitioner paid the ten per cent amount from the Electronic Credit Ledger. The Appellate Authority by order dated 10.01.2023 rejected the appeal on the ground that the ten per cent has to be paid from the Electronic



Cash Ledger. In fact, the said position has been accepted after going into the various provisions of the Goods and Services Tax Act, 2017 (for brevity “GST Act”) by a Division Bench of this Court in *M/s Flipkart Internet Pvt. Ltd. v. The State of Bihar & Ors.*(CWJC No. 1848 of 2023 & *anrlogous cases*), decided on 19.09.2023. However, observations in Paragraphs 77 and 78 of the said judgment have been stayed on 04.12.2023 by the Hon’ble Supreme Court in *Special Leave to Appeal (C) No. 25437 of 2023*.

3. We also notice from Notification No. 53/2023 dated 02.11.2023 issued by the Ministry of Finance, Department of Revenue (Central Board of Indirect Taxes and Customs), which permitted filing of delayed appeals even beyond the period provided under Section 107 of the GST Act, that the stipulation was of paying an amount of 12.5 per cent of the amounts pending and due to be paid to the Department as against the 10 per cent prescribed by the statute. In the said Notification issued by the Central Government on the recommendation of the GST Council, it has been specifically stated that at least 20 per cent of the 12.5 per cent remaining due and payable should be paid from the Electronic Cash Ledger. Hence, even the GST Council understood the ten per cent to be enabled for payment through



the Electronic Credit Ledger.

4. We are not differing from the Division Bench judgment which being a Coordinate Bench binds us. However, we notice that the Hon'ble Supreme Court has stayed the Division Bench judgment and in such circumstances, especially since consideration of the appeal on merits is the question raised before us, we are of the opinion that pending decision of the Hon'ble Supreme Court, the appeal should be considered on merits.

5. We hence, set aside the order in appeal dated 10.01.2023 and direct the same to be considered on merits. We make it clear that the Commissioner, Commercial Taxes, Patna shall issue necessary directions for consideration of appeals when the subject matter is pending before the Hon'ble Supreme Court. There shall be no insistence for payment of the 10 per cent due and payable under Section 107 of the GST Act, from the Electronic Cash Ledger.

6. It is pointed out that in the present case, already ten per cent of the amount remaining due and payable is remitted from the Electronic Credit Ledger which would make the appeal maintainable and the Appellate Authority shall consider it on merits.



7. The writ petition is allowed with the above directions.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

P.K.P./-

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