

(2023) 04 PAT CK 0013

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2396 Of 2023

M/S Shashank Auto Private Limited

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 06-04-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Bihar Goods and Services Tax Act, 2017 — Section 107(6), 109, 112, 112(8), 112(9), 172

Citation : (2023) 04 PAT CK 0013

Hon'ble Judges : K. Vinod Chandran, CJ; Harish Kumar, J

Bench : Division Bench

Advocate : Archana Sinha @ Archana Shahi, Vikash Kumar

Final Decision : Disposed Of

Judgement

1. The instant writ petition has been filed under Article 226 of the Constitution of India seeking following reliefs:-

“(a) For setting aside the order dated 15.12.2022 and demand order dated 19.12.2022 passed by the Additional Commissioner, State Taxes Appeal by which he has imposed the tax, penalty and interest.

(b) For restraining the respondents for not recovering the tax amount from the petitioner till the disposal of the writ petition.

(c) For any other consequential relief or reliefs for which the petitioner is found entitled during the course of hearing of the writ petition.”

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.

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

(i) Subject to deposit of a sum equal to 20 percent of the remaining amount of tax in dispute, 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. The petitioner 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. It is not in dispute that similar relief has been granted by this Court in the case of SAJ Food Products Pvt. Ltd. vs. The State of Bihar & Others in C.W.J.C. No. 15465 of 2022.

(ii) The statutory relief of stay, on deposit of the statutory amount, however 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.