

(2023) 12 PAT CK 0044

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3133 Of 2023

Prashant Luthra

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 14-12-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Bihar Goods and Services Tax Act, 2017 — Section 73, 73(9), 74, 107(1), 107(4)

Citation : (2023) 12 PAT CK 0044

Hon'ble Judges : K. Vinod Chandran, CJ;Rajiv Roy, J

Bench : Division Bench

Advocate : Manju Jha, Vikash Kumar

Final Decision : Disposed Of

Judgement

1. Petitioner has approached this Court for quashing of an order dated 08.12.2021 passed under Section 73(9) of the Bihar Goods and Services Tax Act, 2017 (for brevity 'BGST Act'). There was an appeal provided under the BGST Act'. As per Section 107(4), an appeal would be maintainable within three months of the order or with a delay condonation application within a further period of one month. No such appeal has been filed. The writ petition is itself delayed for almost one year.

2. This Court and the Hon'ble Supreme Court have held that when there is a specific period provided in the statute, within which period a delayed appeal could be filed; then neither the Appellate Authority nor this Court under Article 226 of the Constitution of India could condone the delay beyond the period provided.

3. The Central Board of Indirect Taxes and Customs has by Notification No. 53 of 2023- Central Tax, dated 02.11.2023 (S.O. 4767(E)) extended the time for filing appeal against an order passed by the Proper Officer on or before 31.03.2023 under Sections 73 and 74 of the 'BGST Act'. This in fact extends the period for

filing a delayed appeal beyond the one month period as provided under Section 107(4) of the 'BGST Act', on following the special procedure prescribed under the said Notification.

4. The special procedure prescribed under the Notification is seen from paragraph no. 2 to 6 which are extracted hereunder:-

"2. The said person shall file an appeal against the said order in FORM GST APL-01 in accordance with sub-section (1) of Section 107 of the said Act, on or before 31st day of January 2024:

Provided that an appeal against the said order filed in accordance with the provisions of section 107 of the said Act, and pending before the Appellate Authority before the issuance of this notification, shall be deemed to have been filed in accordance with this notification, if it fulfills the condition specified at para 3 below.

3. No appeal shall be filed under this notification, unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to twelve and a half per cent of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed, out of which at least twenty percent should have been paid by debiting from the Electronic Cash Ledger.

4. No refund shall be granted on account of this notification till the disposal of the appeal, in respect of any amount paid by the appellant, either on their own or on the directions of any authority (or) court, in excess of the amount specified in para 3 of this notification before the issuance of this notification, for filing an appeal under sub- section (1) of Section 107 of the said Act.

5. No appeal under this notification shall be admissible in respect of a demand not involving tax.

6. The provisions of Chapter XIII of the Central Goods and Service Tax Rules, 2017 (12 of 2017), shall mutatis mutandis, apply to an appeal filed under this notification."

5. Hence an appeal against an order under Section 73 or 74 has to be filed on or before 31.01.2024, and any appeal filed which is pending before the authority could also be considered as properly filed, even if there is delay in such filing.

6. However, the maintainability of the appeal is further regulated by paragraph no. 3 which require that the admitted tax, interest, fine, fee and penalty arising from the impugned order is paid up along with a sum equal to 12.5% of the remaining amount of tax in dispute arising from the said order subject to a maximum of twenty-five crore rupees; out of which 12.5%, 20% should have

been paid by debiting from the Electronic Cash Ledger. The further conditions in paragraph no. 4 to 6 also shall be applicable.

7. In the present case, the appeal was not filed. In such circumstances, it is only proper that an appeal be filed satisfying the conditions in paragraph no. 3.

8. Hence the petitioner would be entitled to satisfy paragraph no. 3 of the aforesaid Notification by paying up the amount as would be required to maintain the appeal under the notification.

9. Let an appeal against the impugned order dated 08.12.2021 be filed satisfying the aforesaid conditions before the time stipulated in Notification; i.e. 31.01.2024, in which event, the appeal would be taken up and considered on merits.

10. We dispose of the writ petition on the above terms.