

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17202 of 2023

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M/s Prince Sanitation Gandhi Path, Ward No-8, Saharsa, through its proprietor Prashant Kumar, Male, aged about 24 years, S/o Ajay Kumar Sah, R/o Dharmsala Road, Shiv Shakti Machineries, Ward No-20, Saharsa, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
2. The Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
3. The Additional Commissioner of State Tax (Appeals), Purnia Division, Purnia, Bihar.
4. The Joint Commissioner of State Tax, Saharsa Circle, Saharsa, Bihar.
5. The Assistant Commissioner of State Tax, Saharsa Circle, Saharsa, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Gyan Shankar, Adv
Mr.Abhinav Alok, Adv
For the Respondent/s : Mr.Raghwanand (GA11)
Mr.Pratik Kumar, AC to GA 11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 07-12-2023

The petitioner is before this Court challenging an order in appeal, which rejected the appeal for reason of delay of five days.

2. Section 107(4) of the B.G.S.T. Act clearly stipulates a period of three months time for an appeal to be filed and a further period of one month within which a delayed appeal has to be filed. Going by the statutory provisions, there is



absolutely no power vested either in the Appellate Authority or in a Constitutional Court acting under Article 226 to extend the period of limitation, especially when there is a specific stipulation and period prescribed for the purpose of filing a delayed appeal.

3. However, we see that the Central Board of Indirect Taxes and Customs has brought out a notification dated 02.11.2023 bearing no. 53 of 2023- Central Tax hereunder:

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS)

NOTIFICATION

New Delhi, the 2nd November, 2023

No. 53/2023- CENTRAL TAX

S.O. 4767(E).-In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies taxable persons who could not file an appeal against the order passed by the proper officer on or before the 31st day of March, 2023 under section 73 or 74 of the said Act (hereinafter referred to as the said order), within the time period specified in sub-section (1) of section 107 read with sub-section (4) of section 107 of the said Act, and the taxable persons whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in section 107, as the class of persons (hereinafter referred to as the said person) who shall follow



the following special procedure for filing appeals in such cases:

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 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.*

[F. No. CBIC-20001/10/2023-GST]

RAGHAVENDRA PAL SINGH, Director

4. The difficulty insofar as its application to the petitioner's case is the date on which the proper officer, being the Assessing Officer, having passed the order which was challenged in appeal, on 27.04.2023. The notification which was brought out on 02.11.2023 only permits appeals to be filed from orders passed by the proper officer on or before 31.03.2023, in cases in which it was not instituted in time or within the time permitted for a delayed appeal, and in cases where such delayed appeals beyond the stipulation in 107(4) has been rejected. The petitioner would not squarely fall under the notification.

5. We do not see any rationale for the date fixed of 31.03.2023, as a cut off date. We notice that the notification itself was brought out on 02.11.2023 and in such circumstances any order passed in at least three months before that date; the time provided for filing an appeal, ought to have been considered for such beneficial treatment.

6. In the above circumstances, we are of the opinion that the petitioner also can be allowed to comply with the



conditions in Notification No. 53 of 2023 upon which the order passed in appeal would stand set aside and a fresh consideration will be made by the first Appellate Authority. If the petitioner fails to fulfill the criteria as stated in the notification, then the impugned order will operate.

7. We allow the writ petition with the above directions.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

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Transmission Date	

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