

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4171 of 2023

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M/s Life Insurance Corporation of India a body corporate constituted and notified by the Government of India under Section 3 of the Life Insurance Corporation Act, 1956 having its Divisional Office at Jeevan Ganga Building, Frazer Road, Opp. Buddha Smiriti Park, Patna, Bihar- 800001 through its Manager (Finance and Accounts) namely, Rajesh Kumar Verma, Aged about 57 years, Male, Son of Late Umeshwar Prasad, Resident of Flat No. C/25 Jagat Vaishnavi Apartment Ashiana Nagar P.S. Rajeev Nagar, District Patna.

... .. Petitioner

Versus

1. The Union of India through the Ministry of Finance, Government of India, New Delhi.
2. The State of Bihar through the Principal Secretary-cum-Commissioner, Department of State Taxes, Government of Bihar, Patna.
3. The Principal Secretary-cum-Commissioner, Department of State Taxes, Government of Bihar, Patna.
4. The Additional Commissioner State Tax (Appeal), Central Division, Patna.
5. The Joint Commissioner State Tax, Special Circle, Patna.
6. The Deputy Commissioner of State Taxes, Special Circle, Patna.
7. The Assistant Commissioner of State Taxes, Special Circle, Patna.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. S.D. Sanjay, Sr. Advocate with Mr. Mohit Agarwal, Advocate Mr. Anand Kumar, Advocate Mr. Rahul Kumar, Advocate
For the State	:	Mr. Vikash Kumar, SC-11
For the U.O.I.	:	Mr. Dr. K.N. Singh, Sr. Advocate (ASG) with Mr. Anshuman Singh, Sr. SC, CGST & CX

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

2 23-03-2023 The instant writ petition has been filed under Article 226

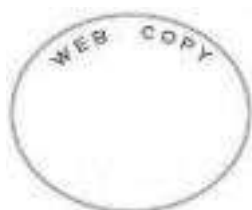
of the Constitution of India seeking following reliefs:-

*“a) For quashing the appellate order
dated 07.03.2023 passed in Appeal*



Case No. AD100922007141W by the Respondent Additional Commissioner State Tax (Appeal) Central Division, Patna whereby, the appeal preferred against order dated 22.06.2022 passed under Section 73 (9) read with Section 50 of the BGST Act, 2017 by the Assistant Commissioner State Tax, Special Circle, Patna was dismissed without considering the grounds raised in appeal;

b) For quashing the order dated 22.06.2022 passed under Section 73 (9) of the BGST Act, 2017 by the Assistant Commissioner State Tax, Special Circle, Patna whereby, the ITC amounting to Rs. 1,23,08,24,596/- was held to be wrongly availed/utilized with respect to Financial Year 2017-18 on the ground that the Petitioner has not followed Section 17(2) & 17(4) of the BGST Act, 2017 in respect of ITC claim and the corresponding ITC has not been reversed properly under the provisions of the Act as the Respondent Department is considering the remaining part of the premium amount (other than prescribed part of the premium in



terms of Rule 32(4) of the BGST Rules, 2017) as exempted instead of the same being a non-taxable value/component for purpose of calculating service tax liability of the Petitioner on the said premium amounts;

c) For quashing the consequential demand notice issued in Form GST DRC- 07 dated 22.06.2022 whereby, a total demand to the tune of Rs. 2,34,28,89,862/- including interest and penalty has been raised against the Petitioner;

d) For holding that the impugned Assessment Order under Section 73(9) of the BGST Act, 2017 is arbitrary as the same has been passed beyond the scope of Show-Cause Notice as the Petitioner was called upon to show cause as to why a penalty under Section 50 (1) of the BGST Act, 2017 be not imposed whereas in the impugned Assessment Order the Respondent concerned has imposed penalty under Section 50(3) of the BGST Act, 2017 which is beyond the scope of Show-Cause Notice and hence liable to be quashed;



e) For directing the Respondent to not initiate recovery proceeding against the Petitioner with respect to the impugned demand notice issued in Form DRC-07 dated 22.06.2022 until constitution of the GST Appellate Tribunal in terms of Section 112 of the BGST Act, 2017 read with Rule 110 of the BGST Rules, 2017 as the Petitioner is ready to deposit the pre-deposit amount in terms of Section 112 (8) of the BGST Act, 2017;

f) For holding that the remaining part of the premium amount (other than prescribed part of the premium in terms of Rule 32(4) of the BGST Rules, 2017) is a non- taxable value/component for purpose of calculating service tax liability of the Petitioner on the said premium amounts and not an exempted value component and hence, the ITC on the said amount is not required to be reversed in terms of Section 17(2)7 17(4) of the BGST Act, 2017; any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case.”



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.

Considering the facts and circumstances noted above, this Court in the case of *Angel Engicon Private Limited vs. the State of Bihar & Anr.* passed in *C.W.J.C No. 1920 of 2023* has disposed of the writ petition with certain observations and directions, allowing certain liberty to the petitioner, which reads as follows:

"If the petitioner makes a deposit of a sum equal to 20 percent of the remaining amount of tax in dispute, in addition to the amount deposited earlier under Sub-Section (6) of Section 107 of the B.G.S.T. Act, then the petitioner must be extended the statutory benefit of stay under Sub-Section (9) of Section 112 of the B.G.S.T. Act, for he 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.

The statutory relief of stay on deposit of the statutory amount, 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.

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."

An additional fact, as is apparent from the records, in the instant case, is passing of order by the Appellate Authority on



07.03.2023. Thus, it is submitted by Mr. S. D. Sanjay, learned Senior Counsel that the petitioner has three (3) months time under Section 112 (1) of the BGST Act for preferring an Appeal to the Appellate Tribunal. Even the statutory period of limitation, has not yet lapsed. He, thus, submits that at least for three(3) months, the Authorities are not in a position to take any coercive action against the petitioner for recovering the remaining amount of tax in dispute.

Considering the said additional fact, in the instant case, this Court is of the opinion, that equities are required to be balanced. In the instant case, non-constitution of the Appellate Tribunal causing deprivation to the petitioner's statutory right to appeal under Section 112(8)(9) has to be viewed in the background of the fact that at least the amount, as contemplated under Section 112(8), i.e., 20 percent of the remaining tax in dispute is required to be deposited by the petitioner with due diligence, if he is genuinely desirous of availing the remedy of appeal, which, in the opinion of this Court, would be within four(4) weeks. We, therefore, dispose of the writ application in the following terms:

(i) If the petitioner makes a deposit of a sum equal to 20 percent of the remaining amount of tax in dispute, within four



(4) weeks, in addition to the amount deposited earlier under Sub-Section (6) of Section 107 of the B.G.S.T. Act, then the petitioner must be extended the statutory benefit of stay under Sub-Section (9) of Section 112 of the B.G.S.T. Act, for he 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.

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

(Chakradhari Sharan Singh, ACJ)

(Madhuresh Prasad, J)

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