

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6285 of 2023

M/S Akash Traders through its proprietor, Namita Kumari, Female, aged about 45 years, W/o Ajay Kumar, Resident of Muradpur Bochaha, Ahiyapur, P.S.- Ahiyapur, District- Muzaffarpur, Pin-843103

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner of State Tax, Patna.
2. The Joint Commissioner of State Tax, Muzaffarpur East, Tirhut Bihar State/UT, Bihar.
3. Assistant Commissioner of State Tax, Muzaffarpur East, East Circle, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Md. Jubair Ansari, Advocate
For the Respondent/s : Mr. P.K Shahi, AG

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 01-05-2023

The petitioner is, before us, challenging the orders of the Assessing Officer passed at Annexure-1 and 2 respectively for the years 2018-19 and 2019-20. In Annexure-1, the Assessing Officer found that the taxable person has claimed excess ITC coming to almost Rs. 91,84,390/-. The dealer claimed ITC in the 3B return far in excess of the credit available in GSTR-2A.



2. In the year 2019-20 also, a similar claim was made amounting to Rs. 26,32,732/-. A demand was made insofar as the excess claim along with interest and penalty.

3. The learned counsel for the petitioner, before us, submits that he is ready to pay the amount but, however, there is an appellate remedy available before the Tribunal and the Tribunal has not been constituted.

4. The Bihar Goods and Services Tax Act, 2017 by Section 107 provides for an appeal before the Appellate Authority, who is the department official. When the first appellate remedy is available and not availed of, the assessee cannot straightaway approach the second appellate remedy before the Tribunal. The petitioner having not approached the first Appellate Authority as such, there is no question of leaving the petitioner's right to appear before the Tribunal which is a second Appellate Authority. The attempt of the petitioner is to get the recovery stayed till the constitution of the Tribunal. Such orders passed by us, on deposit of 20% of the further tax disputed, cannot be sought by persons who were not diligent enough to approach the first Appellate Authority and are thus disentitled from



seeking any remedy before the Tribunal.

5. In such circumstances, we find no reason to entertain the writ petition and the same is dismissed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

Aditya/Sujit

AFR/NAFR	NAFR
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