

Extraordinary jurisdiction under Article 226 cannot be invoked when the statutory remedy of appeal is not availed

The Hon'ble Patna High Court in the case of *M/s. Punit Kumar Choubey v. Commissioner Commercial Tax, Patna [CWJC No.9975 of 2023 dated August 10, 2023]* held that the extraordinary jurisdiction under Article 226 cannot be invoked when statutory remedy of appeal is not availed.

Facts:

M/s. Punit Kumar Choubey ("**the Petitioner**") filed a Writ Petition before the Hon'ble Patna High Court against the ex-parte Assessment Order dated December 10, 2021 ("**the Impugned Order**") and rejection of the Appeal filed passed by the Revenue Department ("**the Respondent**") on the ground of limitation.

The Respondent through the counter affidavit filed, stated that, the Petitioner has claimed Input Tax Credit ("**the ITC**") of Rs.3,78,624/-. However, the GSTR-2A as provided by the supplier of the Petitioner showed only a credit of Rs. 93,825. The electronic notice was uploaded in the portal and reminders were sent to the Petitioner but no response was received from the side of the Petitioner.

Thereafter, the Show Cause Notice dated on November 8, 2021 was issued to the Petitioner; fixing December 7, 2021, as last date for hearing. The Petitioner failed to appear and therefore, the Respondent passed the Impugned Order under Section 73(9) of the Bihar Goods and Services Tax Act, 2017 ("**the BGST Act**"). Aggrieved by the Impugned Assessment Order, the Petitioner filed the Appeal which was rejected by the Respondent Appellate Authority on the ground of the limitation.

Issue:

Whether the extraordinary jurisdiction under Article 226 can be invoked when the statutory remedy of appeal is not availed?

Held:

The Hon'ble Patna High Court in the case of ***CWJC No.9975 of 2023*** held as under:

- Relying upon the judgement of Hon'ble Supreme Court in the case of *State of H.P. & Ors. v. Gujarat Ambuja Cement Ltd. & Anr. [Civil Appeal No. 2641 of 2000 dated July 18, 2005]* observed that, the Article 226 of the Constitution confers wide powers on the High Court, the High Court has the discretion to not grant relief if there is an adequate and effective remedy elsewhere. The High Court can exercise the powers conferred only in cases where there is a breach of principles of natural justice, due procedure has not been adopted or the orders or proceedings are wholly unjust, without any jurisdiction or when the vires of the Act is challenged. However, no such plea has been raised by the Petitioner in the present case.
- Further Observed that, the appellate remedy is provided under Section 107 of the BGST Act. This remedy has to be availed within the period of three months and if due to any sufficient reason appeal could not be filed, the delay can be condoned for a further period of one month.
- Noted that, as the Petitioner has not availed the available statutory remedies, therefore, the Petitioner cannot approach the High Court, challenging the Impugned Order under Article 226 as the Petitioner has failed by his own accord to avail the appellate remedy within the limitation period.
- Further Noted that, when a specific period for condonation of delay is provided, there cannot be any extension of period by the Appellate Authority or the High Court under Article 226 of the Constitution.

- Opined that, the Petitioner by his own failure has not availed the appellate remedy, therefore, the Petitioner cannot invoke extraordinary jurisdiction under Article 226 of the Constitution. Also, there is no jurisdictional, violation of principles of natural justice or abuse of process of Court averred or argued by the petitioner in the above writ petition.
- Held that, the writ petition be dismissed.

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