

Writ not entertained if alternative remedy of filing of appeal not availed

The Hon'ble Patna High Court in ***M/s. Narayani Industry v. State of Bihar [Civil Writ Jurisdiction No.11333 of 2023 dated August 11, 2023]*** held that when there is a specific period for condonation of delay in the statute, there cannot be any extension of the said period by the Appellate Authority under Article 226 of the Indian Constitution.

Facts:

An Inspection was conducted on the Premises of M/s. Narayani Industry ("**the Petitioner**") basis such inspection the Revenue Department ("**the Respondent**") issued three orders dated March 04, 2023, March 10, 2023 and March 18, 2023 and all these orders were appealable under section 107 of the Bihar Goods and Services Tax Act, 2017 ("**the BGST Act**"). However, the Petitioner did not appealed such orders.

Aggrieved by the Orders the Petitioner filed writ before the Hon'ble Patna High Court.

The Respondent contended that the Petitioner has not availed the appeal remedy and has chosen to approach writ Court under Article 226 of the Constitution of India without exercising appeal.

Issue:

Whether the Petitioner can approach writ Court directly without filing appeal before the Appellate Authority?

Held:

The Hon'ble Patna High Court ***Civil Writ Jurisdiction No.11333 of 2023*** held as under:

- Noted that, in the present case there is no jurisdictional error or violation of principles of natural justice or abuse of process of law averred or argued by the Petitioner in the above writ petition.
- Relied upon the Judgement of ***State of H.P & Ors. v. Gujarat Ambuja Cement Limited & Anr [(2005) 6 SCC 499]*** wherein the Hon'ble Supreme Court held that if an assessee approaches the High Court without availing the alternate remedy, assessee should ensure that it has made out a strong case or that there exists good grounds to invoke the extraordinary jurisdiction.
- Opined that, there is no ground stated in the writ petition which would enable invocation of the extraordinary remedy under Article 226 of Indian Constitution.
- Held that, when there is a specific period for delay condonation provided, there cannot be any extension of the said period by the Appellate Authority or by this Court under Article 226 of the Indian Constitution.

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