**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.6180 of 2026**

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M K Traders through its Proprietor Mukund Kumar Singh, Male, aged about 58 years, Son of Rambahadur Singh, Resident of Musapur, Sonbarsa Chowk, Ward No.- 4, Samastipur District- Samastipur, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner of State Taxes, Bihar, Patna.
2. The Additional Commissioner of State Taxes (Audit), Darbhanga Division.
3. The Assistant Commissioner of State Taxes, Samastipur Circle, Samastipur.
4. The Joint Commissioner of State Taxes (Appeals), Darbhanga Division.

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Sanjay Kumar Mishra, Advocate |
| For the Respondent/s | : | Mr. Ravish Kumar, A.C to S.C-11 |

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**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA**
**and**
**HONOURABLE MR. JUSTICE VIKASH KUMAR**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE VIKASH KUMAR)**

**Date : 14-07-2026**

Heard, Sri Sanjay Kumar Mishra, learned counsel for the petitioner and Sri Ravish Kumar, learned counsel for State.

2. The petitioner is a registered dealer having registration number, GSTIN 10AIUPS0208G1ZH and is engaged in the business of trading of cement and allied goods.

3. It is the case of petitioner that during period July 2017 to March 2018, a proceeding of scrutiny of Returns was initiated under Section 61 of the Bihar Goods and Services Tax Act 2017 (herewith to be referred as BGST Act 2017) and in course of

proceeding, a show cause notice in Form GST DRC-01 dt 07.12.2022 was issued and consequently summary order in Form GST DRC-07 dated 07.02.2023 was passed, raising a demand against the petitioner.

4. The petitioner aggrieved by order dated 07.02.2023 under Section 73(9) of the BGST Act 2017 passed by respondent no. 3 i.e., the Assistant Commissioner, State Taxes, Samastipur Circle, Samastipur preferred an appeal on 02.04.2024 before, Additional Commissioner State Taxes (Appeal) Darbhanga Division, Darbhanga under the provision of Section 107 of the BGST Act 2017.

5. The learned Appellate Authority, vide impugned order dt 09.07.2024 (Annexure P/5 to the writ application) rejected the appeal at the point of admission itself after recording its findings to the extent that since the petitioner has filed the appeal against order dt 07.02.2023, on 04.04.2024 which is beyond the specified period under Section 107 of the BGST Act 2017 read with Rule 108 of the BGST Rules 2017.

6. The learned counsel for petitioner contended that the Appellate Authority has rejected the appeal solely on the ground of limitation without examining the merits of the case. It has further

been contended that the Appellate Authority has erroneously contended limitation from the date mentioned on the order i.e., 07.02.2023 without examining whether the said order has been properly communicated to the petitioner or not ?

7. Learned counsel appearing for respondent department supports the impugned order passed by the learned Appellate Authority and contends that as per the provision of Section 107(I) of BGST Act 2017, the petitioner aggrieved by order dt 07.02.2023 passed by respondent no. 3 under the Section 73(9) of the BGST Act 2017 is mandated to file appeal within 3 months from the date of communication of order. The admitted position is that the order dt 07.02.2023 was uploaded on common portal on the date of order itself. Since the delay in filing of appeal is more than 13 months, the petitioner is precluded from raising the issue of communication. He further submits that the Appellate Authority has power under Section 107(4) of BGST Act 2013 to condone the delay, but this power is limited only to extent of 1 month. He further submits that present writ application is fit to be rejected on the ground of ‘delay’ in filing and in support of his contention has relied on the judgment passed by Hon’ble Supreme Court dated 06.05.2020, in the ***Assistant Commissioner (CT) LTU, Kakinada***

***and Ors Vrs Glaxo Smith Kline Consumer Health Care Ltd (reported in (2020) 19 SCC 681.)***

8. After hearing the parties, following are the issues for consideration by this Court-

(i) Whether the present writ application in present fact and circumstances of this case is fit to be rejected on the ground of delay and availability of alternative remedy?

(ii) Whether this Court in exercise of power under Article 226 of Constitution of India can condone the delay in filing of appeal under Section 107(4) of the BGST Act 2017.

Consideration

9. To start with issue no. (i)- the petitioner aggrieved by order dated 07.02.2023, passed by respondent no. 3 under Section 73(9) of the BGST Act 2017 (Annexure P/3 of the writ application) has filed belated appeal on 02.04.2024 under Section 107 of BGST Act 2017, which was rejected by the learned Appellate Authority on the ground of its competence to condone the delay beyond 30 days. The petitioner instead of filing appeal before learned GST Tribunal under Section 112 of BGST Act 2017, on the ground of its non availability has filed the present

writ application on 24.03.2026 i.e., almost after a delay of three years. The Hon'ble Supreme Court in the matter of ***CIT Vrs Chhabil Dass Agrawal*** reported in ***(2014)ISCC 603*** has held that when a statutory forum is created by law for redressal of grievance, writ petition should not be entertained ignoring said statutory dispensation. Even if contention of petitioner as regard belated communication of order and available alternative remedy being non available are accepted then also in the circumstances of delayed filing of writ application for more than 3 years, the present writ application is not entertainable under Article 226 of Constitution of India. The Hon'ble Supreme Court vide judgment dated 06.05.2022 in the matter of ***CCT Vrs Glaxo Smith Kline Consumer Health Care Ltd.*** [reported in ***(2020)19 SCC 681***] in specific terms has restrained the High Court from entertaining writ application filed beyond the statutory period of appeal. The relevant paragraph 19 is reproduced as -

> *"19. We may now revert to the Full Bench decision of the Andhra Pradesh High Court in Electronics Corpn. of India Ltd., which had adopted the view taken by the Full Bench of the Gujarat High Court in Panoli Intermediate (India) (P) Ltd. v. Union of India and also of the Karnataka High Court in Phoenix Plasts Co. v. CCE. The logic applied in these decisions proceeds on fallacious premise. For, these decisions are premised on the logic that*

*provision such as Section 31 of the 2005 Act, cannot curtail the jurisdiction of the High Court under Articles 226 and 227 of the Constitution. This approach is faulty. It is not a matter of taking away the jurisdiction of the High Court. In a given case, the assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction — by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and rules of procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three-Judge Bench of this Court in ONGC In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose."*

9.1. In present case, the petitioner contending belated communication of order has filed the present writ application after unexplained delay of 3 years. It is imperative to mention here that the legislature in its wisdom has mandated the time bound compliances of its provisions. As per provision of Section 37 of BGST Act 2017, read with Rule 59 of BGST Rules 2017 mandates furnishing details of outward supplies in Form GSTR-l effected during a tax period on or before the 10th day of the month succeeding the said tax period. The details of outward supplies furnished by the registered person under Section 37(1) is made available electronically to the recipients of such supplies in FORM GSTR-2A, as per Section 38 read with Rule 60 of the BGST Rules 2017. Further as per section 39 of BGST Act 2017 read with Rule 61 of the BGST Rules 2017 mandates filing of Returns in FORM GSTR-3B, on or before the 20th day of the month succeeding such month. As per Rule 59 (2) of BGST Rules 2017, the details furnished in GSTR-1 may be amended in FORM GSTR-1A before filing of Return GSTR-3B. As per Section 44 of the BGST Act 2017, read with Rule 80 of the BGST Rules 2017, the registered person is required to furnish an annual return with audited financial statement in FORM GSTR-9 on or before the 31st day December following the end of such financial year. It may be mentioned here that the registered person is allowed to rectify the omission or incorrect particulars furnished in FORM GSTR-3B before 30th November following the end of the financial year to which such details pertain. As per, provisions of Section 16(4) of the BGST Act 2017, a registered person is entitled to take Input Tax Credit upto 30th day of November following the end of financial years or furnishing of annual return whichever is earlier. The proper officer has to pass order, determining tax under Section 73(9) within 3 years and 5 years as per Section 74(10) of the BGST Act 2017, from the due date for furnishing of annual return for the financial year. It is this order passed under Section 73 or 74 is made appellable under Section 107 of the BGST Act 2017, and requires its filing within 3 months from the date of communication. The legislature in its wisdom by provision of Section 107(4) of the BGST Act 2017 has empowered the Appellate Authority to condone the delay of further one month in filing of appeal and Section 107(13) mandates him to decide the appeal within a period of one year from the date of its filing.

9.2. In our opinion, entertainment of writ application filed almost after 3 years of unexplained delay will frustrate very legislative intent and will render the legislative scheme otiose. Further adhering to recent Judgment dated 03.06.2021, passed by the Hon'ble Supreme Court in matter of the ***ACST Vrs. M/s Commercial Steel Ltd.***, reported in ***(2022) 16 SCC 447***, to the extent that existence of an alternative remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of Constitution in exceptional circumstances of breach of fundamental right, violation of principles of natural justice, an excess of jurisdiction, a challenge to the vires of the statutes or delegated legislation, we are of the view that the present writ application filed beyond the statutory period of filing appeal may not be entertained in any case by the High Court in exercise of power under Article 226 of Constitution of India.

10. Further coming to issue no. (ii), whether this Court has power under Article 226 to condone the delay beyond a period of 30 days within the meaning of Section 107(4) of the BGST Act 2017, has succinctly been answered by Hon'ble Supreme Court in the matter of Assistant Commissioner ***(CT) LTU, Kakinada and Ors Vrs. Glaxo Smith Kline Consumer Health Care Limited,*** reported in ***(2020)19 SCC 681***. The relevant paragraph 16 for the sake of brevity is reproduced herein below-

> *"16. Indubitably, the powers of the High Court under Article 226 of the Constitution are wide, but certainly not wider than the plenary powers bestowed on this Court under Article*

*142 of the Constitution. Article 142 is a conglomeration and repository of the entire judicial powers under the Constitution, to do complete justice to the parties. Even while exercising that power, this Court is required to bear in mind the legislative intent and not to render the statutory provision otiose. In a recent decision of a three-Judge Bench of this Court in ONGC v. Gujarat Energy Transmission Corpn. Ltd., the statutory appeal filed before this Court was barred by 71 days and the maximum time-limit for condoning the delay in terms of Section 125 of the Electricity Act, 2003 was only 60 days. In other words, the appeal was presented beyond the condonable period of 60 days. As a result, this Court could not have condoned the delay of 71 days. Notably, while admitting the appeal, the Court had condoned the delay in filing the appeal. However, at the final hearing of the appeal, an objection regarding appeal being barred by limitation was allowed to be raised being a jurisdictional issue and while dealing with the said objection, the Court referred to the decisions in Singh Enterprises v. CCE, CCE v. Hongo (India) (P) Ltd., Chhattisgarh SEB v. CERC and Suryachakra Power Corpn. Ltd. v. Electricity Deptt. and concluded that Section 5 of the Limitation Act, 1963 cannot be invoked by the Court for maintaining an appeal beyond prescribed period in Section 125 of the Electricity Act."*

The Hon'ble painstakely observes that-

*"Be it noted, when there is a statutory command by the legislation as regards limitation and there is the postulate that delay can be condoned for a further period not exceeding sixty days, needless to say, it is based on certain underlined, fundamental, general issues of public policy as has been*

> *held in Union Carbide Corpn. Case. As the pronouncement in Chhattisgarh SEB V. CERC, lays down quite clearly that the policy behind the Act emphasising on the constitution of a special adjudicatory forum, is meant to expeditiously decide the grievances of a person who may be aggrieved by an order of the adjudicatory officer or by an appropriate Commission. The Act is a special legislation within the meaning of Section 29(2) of the Limitation Act and, therefore, the prescription with regard to the limitation has to be the binding effect and the same has to be followed regard being had to its mandatory nature. To put it in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the Constitution."*

Further paragraph 16, mandates-

> *"18. A priori, we have no hesitation in taking the view that what this Court cannot do in exercise of its plenary powers under Article 142 of the Constitution, it is unfathomable as to how the High Court can take a different approach in the matter in reference to Article 226 of the Constitution. The principle underlying the rejection of such argument by this Court would apply on all fours to the exercise of power by the High Court under Article 226 of the Constitution."*

10.1. The Bihar Goods and Services Tax Act 2017, is a special Act and provision of Section 162 bars the jurisdiction of civil Court, save as provided in Section 117 and 118 of the Act to deal with or decide any question arising from or relating to anything done or purported to be done under this Act. Section 117 of the Act mandates the High Court to exercise its Appellate jurisdiction against the order passed by the State Benches of the Appellate Tribunal constituted under Section 109. Section 117(2) provides for filing of appeal to High Court writ in 180 days and the proviso empowers is to condone the delay after appreciation of sufficient cause for not filing it within such prescribed period. The provision of Section 118 relates with appeal to Hon'ble Supreme Court from any order passed by Principal Bench of the Appellate Tribunal.

10.2. Accordingly, provision of Section 162 bars the jurisdiction of civil Court in reference to Section 107 of the BGST Act and legislature in its wisdom has restricted a limit of 30 days to Appellate Authority under Section 107(4), three months to Appellate Tribunal for filing appeal/45 days for filing memorandum of cross-objection under Section 112(6) and the High Court in exercise of its Appellate jurisdiction under Section 117(2) proviso of this BGST Act 2017, for condonation of delay in filing of an application before respective Forum.

10.3. Therefore, the condonation of delay by this Court in exercise of power under Article 226 of Constitution of India in filing of appeal under Section 107 of BGST Act 2017 in our opinion, will be against the legislative intent manifested in the provision of BGST Act 2017. It is true that High Court has wide jurisdiction under Article 226 of constitution of India but does not mean that it can disregard the substantive provision of a Statute. Accordingly, we come to the conclusion that this Court can't entertain the present writ application filed after expiry of prescribed time limit.

11. The issue of delay in filing statutory appeal before the Appellate Authority and writ application before this Hon'ble is not *Res integra*. The Hon'ble Patna High Court vide judgment dated 20.4.2023 in matter of ***M/s Vishwanath Traders Vrs Union of India***, which has been affirmed by Hon'ble Supreme Court vide order dated 04.08.2023 i.e., SLA (C)No- 15594/2023, has addressed the issue of filing of writ application against order passed by Appellate Authority rejecting appeal on ground of delay, has dismissed the writ application. In matter of ***M/s Adarsh Construction Vrs. State of Bihar***, vide judgment dated 23.01.2024, Patna High Court has dismissed the writ application

with the observation that the law favours the diligent and not the indolent and the same view was reiterated by the Court vide judgment dated 11.07.2024 in the matter of ***M/s D.K. Jamuar and Co. Vrs. State of Bihar & Ors***.

12. Accordingly, it is held that writ application under Article 226 of Constitution of India against impugned action of respondent department under BGST Act 2017 is maintainable in exceptional circumstances viz. breach of fundamental rights, violation of the principle of natural justice, excess of jurisdiction and challenge to the vires of statute or delegated legislation but shall not be entertained, if it is filed beyond the statutory period of filing of appeal. The present writ application filed after gross delay of almost three years from the impugned order is not entertainable and is dismissed.

**(Anil Kumar Sinha, J)**

**( Vikash Kumar, J)**

Amit/-

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