IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13026 of 2026

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Genius Construction a proprietary concern having its office at Laxmipur, Andar Dhala, Siwan, Bihar - 841226 through its proprietor Vinay Kumar Pandey (Male, aged about 49 years) son of Bharat Pandey resident of Laxmipur, Andar Dhala, Siwan, Bihar - 841226.

... ... Petitioner/s

Versus

1. State of Bihar through Commissioner of State Tax, Bihar, Patna having its office at Kar Bhawan, Birchand Patel Marg, Patna- 800001.
2. Additional Commissioner of State Tax (Appeal), Saran Division, Chapra, Bihar.
3. Deputy Commissioner of State Tax, Siwan, Saran, Bihar.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. D.V. Pathy, Senior Advocate
For the Respondent/s : Mr.Vivek Prasad, Government Pleader (7)

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

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA)

Date : 25-08-2026

1. Heard the parties.

2. The petitioner has challenged the order dated 12.01.2026 passed in Appeal Case No. SN / GST -52 / 2025-26 by the respondent no. 2 - Additional Commissioner of State Tax (Appeal), Saran Division, Chapra, Bihar whereby the Appeal has been dismissed *in limine*.

3. Mr. D.V. Pathy, learned senior counsel appearing for the petitioner argued that the Appeal has been dismissed merely on the ground of non -appearance of counsel and without adhering to the provision of Section 107 (12) of the Central /

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Bihar Goods And Services Tax Act, 2017 (hereinafter referred to as the "Act"). As per Section 107 (12) of the Act, the Appellate Authority has to dispose the Appeal after framing the points for determination, the decision thereon and the reasons for such decision. The Appellate Authority without framing the points for determination and without giving reasoned order / decision upon those points, merely dismissed the Appeal *in limine* on the ground that the petitioner / his counsel failed to appear on eleven occasions. He relies upon a Division Bench judgment of this Court in the case of Purushottam Stores versus The State of Bihar & Ors. rendered in C.W.J.C. No. 4349 of 2023 and the judgment of the Hon'ble Supreme Court in SLP (C) No. 20772 / 2023 (Sharda Construction versus The State of Bihar and Ors).

4. The petitioner is a proprietary concern and is engaged in the business of execution of works contract. The notice was issued by the Deputy Commissioner of State Tax, Siwan, Saran under Section 73(5) of the Act *inter alia* stating that on verification of the return in Form GSTR 3B it appears that receipt in terms of GSTR 7 has not been disclosed and on that basis the respondent no. 3 calculated the amount of tax, interest and penalty equivalent to 10% of the tax payable. A notice under

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Section 74 of the Act in GST DRC-01 was also issued quantifying the amount of tax, interest and penalty.

5. The petitioner filed its return in the month of March, 2025 disclosing turnover from April, 2024 to March, 2025 and also paid tax on such turnover. After filing the return, the petitioner filed reply to the show- cause notice on 26.04.2025 stating therein that proceedings under Section 74 of the Act are wrongly invoked as there is no fraud, willful misstatement or suppression of facts. The petitioner also stated that the tax due has been paid in the month of March with applicable interest under Section 50 of the Act.

6. The respondent no. 3 only on the basis of notice and without grant of personal hearing passed the order, however, admitting that the petitioner has paid tax in March, 2025 within thirty days of the notice in Form GST DRC-07. The respondent no. 3 accepting the fact of payment of tax raised no demand of tax and interest, however, imposed penalty amounting to Rs. 4,66,752/-. The petitioner filed an Appeal before the respondent no. 2 on the grounds *inter alia* that levy of penalty in the facts and circumstances of the case is not justified. The respondent no. 2 on the solitary ground of non- appearance in response to the notice issued to the petitioner and merely

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re-producing the grounds of Appeal without consideration thereof passed order dismissing the Appeal *in limine*.

7. Learned counsel for the State on the other hand submits that judgment of Purushottam Stores (Supra) in C.W.J.C. No. 4349 of 2023 is not applicable in the facts of the present case on the ground that Division Bench took notice of the fact that there is no efficacious alternative remedy as of now against the Appellate order since the Tribunal to which a further Appeal is provided has not been constituted but right now the Tribunal has been constituted and is functional also.

8. We have heard learned counsel for the parties and have examined the provisions of Section 107 of the Act. Upon reading of Section 107 (11) of the Act it indicates that the Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appeal against but shall not refer the case back to the Adjudicating Authority that passed the said decision or order. Section 107 (12) of the Act reads that the order of the Appellate Authority disposing of the Appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

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9. Upon reading Section 107 (12) of the Act it is clear that the Appellate Authority has to dispose the Appeal by passing an order in writing stating the points for determination, the decision thereon and the reasons for such decision.

10. As per the case of the petitioner, the respondent no. 3 in the order of assessment accepted the fact that the petitioner has paid the amount of tax with applicable interest in its return for the month of March, 2025 within a period of thirty days from the issuance of notice. The respondent no. 3 in the order of assessment has accepted the turnover and also the tax that is payable thereon. A look of the summary order in Form GST DRC-07 would show that respondent no. 3 has calculated the amount of tax and interest as zero. It shows that no tax or interest is due. In view of payment of tax and acceptance thereof and without referring to any fraud or misstatement of facts with an intent to evade payment of tax as per the petitioner there was no possible intent to evade payment of tax. The Appellate Authority is empowered to refuse the prayer of adjournment by the appellant beyond three occasions but the Appellate Authority allowed eleven adjournments. In this situation also the Appellate Authority cannot absolve itself from the obligation to conduct such further inquiry as is mandated under sub-section (11) of

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Section 107 of the Act. Sub -section (12) of Section 107 of the Act also mandates that the order of the Appellate Authority disposing of the Appeal shall be in writing specifically stating the points for determination, the decision thereon and the reasons for such decision. The Appeal has been dismissed on the ground of absence of the appellant and only reiterating the grounds of Appeal. It appears that the Appellate Authority did not frame the points for determination and disposed the Appeal without giving decision upon points for determination and the reasons for such decision. We are convinced that the Appellate Authority failed to follow the statutory mandate and dismissed the Appeal primarily on the ground of non -prosecution by the appellant.

11. Considering the aforesaid discussions and the fact that directing the appellant to approach the Tribunal in the facts of the present case will unnecessarily prolong the litigation, in our opinion, interest of justice would be served if the matter is remitted back to the Appellate Authority to pass a fresh order in the light of specific provision of Section 107 (11) & 107(12) of the Act.

12. In the result, the impugned order dated 12.01.2026 (Annexure : P-7) is set aside.

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13. The matter is remanded back before the Appellate Authority to pass a fresh order in accordance with law after giving notice and opportunity of hearing to the appellant.

14. The Appellate Authority upon receipt / production of a copy of this order shall fix the date of hearing, and after giving proper notice and personal hearing to the appellant, shall dispose the Appeal on merit within a total period of three months thereafter.

15. The petitioner is also directed to co-operate in the hearing of the Appeal and even if there is absence of the appellant or his authorized representative on the date of hearing, the Appellate Authority may dispose the Appeal on merit and pass a reasoned and speaking order in terms of the statutory provisions.

16. With the aforesaid direction and observation, this writ application is allowed.

(Anil Kumar Sinha, J)

(Vikash Kumar, J)

praful/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	07-09-2026
Transmission Date	NA

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