

Badri Prasad Yadav vs. State of Bihar

1 September 2023

Issue Involved

Dismissal of appeal due to delay.

Held that

- Writ petition filed against dismissal of appeal under section 107, after 65 days from date on which even limitation period as stipulated by Supreme Court in case of In Re: Cognizance For Extension of Limitation, had expired, was to be dismissed
- O Claim of input tax credit and computation thereon ought to have been agitated before appellate authority under section 107 of BGST Act, 2017 and having not availed statutory remedies available, assessee could not seek to approach Court under Article 226 of Constitution to challenge an assessment order.

Case Reference

[2023] 151 taxmann.com 109 (Patna)



Facts of the Case:

Revenue:

- The respondent, State of Bihar, argued that the petitioner's claim of input tax credit was not valid as the supplier had not paid the tax in question to the government, which is against the provisions of Section 16(2) of the BGST Act.
- O They contended that the petitioner should have agitated the claim before the appellate authority under Section 107 of the Act and availed the statutory remedies available.
- Since the petitioner failed to do so, they were not entitled to approach the court under Article 226 of the Constitution to challenge the assessment order.
- The respondent argued that the writ petition should be dismissed.

Petitioner:



- The petitioner filed a writ petition challenging the dismissal of an appeal under Section 107 of the Bihar Goods and Services Tax Act-2017 (BGST Act) due to a delay in filing.
- The petitioner had received a show-cause notice under Section 73 of the BGST Act, and an order was subsequently passed on December 27, 2021.
- The petitioner admitted to a wrongful claim of input tax credit, and an appeal against the order was filed on September 2, 2022, the appeal was dismissed due to the delay in filing.

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- The court referred to a Supreme Court judgment regarding the extension of limitation due to the pandemic situation, the Supreme Court had allowed an appeal to be filed within 90 days from March 1, 2022.
- O However, the petitioner failed to avail this provision and filed the appeal on September 2, 2022, after 65 days from the expiration of the stipulated limitation period.

Summary:

In the case of Badri Prasad Yadav, the High Court of Bihar ruled that the writ petition should be dismissed. The court also noted that when a specific period for delay condonation is provided, it cannot be extended by the appellate authority or the High Court under Article 226 of the Constitution. Therefore, the petitioner should have availed the appellate remedy provided under Section 107 of the BGST Act within the prescribed time. As the petitioner had not exhausted the available statutory remedies, the court held that the challenge to the assessment order could not be made through a writ petition.

Notes to News & Updates:

Please note that Facts of the Case and Queries are as summarized by us based on our reading of case law and our interpretation based on law prevailing as on the judgement date. No assurance is being given on the correctness of the facts, and our opinion / analysis is given solely based on facts provided herein above.

Please note that this news and update is prepared by author for spreading knowledge, and the view is a matter of interpretation, and law is subject to various interpretations. The application of law and impact can vary widely based on the specific facts and interpretation of statute. Our views expressed above is based on facts and assumptions indicated above. No assurance is given that the authorities and/or Courts will concur with our views. We do not accept any liability, for any loss or damage caused as a result of any action taken on the above opinion expressed by us.

We hope you will find the above in order and we shall be too glad to provide any other assistance as may be required. In case you are looking specific expert help in relation to matters connected to this update or otherwise, please feel free to write to us on vaibhavjain@mehragoelco.com; mg@mehragoelco.com

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