

Supreme court disallows SLP, where alternative remedy not exercised by assessee

The Hon'ble Supreme Court in *M/s. Vishwanath Traders v. Union of India & Ors. [Special Leave to Appeal (C) No(s). 15594 of 2023 dated August 04, 2023]* upheld the order of the Hon'ble Patna High Court wherein the high court held that extraordinary jurisdiction under Article 226 of Constitution of India cannot be invoked where assessee has alternate remedies available and he was not diligent in availing such alternate remedies within the stipulated time.

Facts:

M/s. Vishwanath Traders (**"the Petitioner"**) aggrieved by the Assessment order dated March 12, 2022 passed by the Revenue Department (**"the Respondent"**) filed an appeal before the Appellant Authority.

The Appellate Authority vide an Order dated October 17, 2022 (**"the Appellate Order"**) dismissed the appeal and stated that as per Section 107 of the Bihar Goods and Services Tax Act, 2017 (**"the BGST Act"**) an appeal can be filed within three months from the date of which the said decision or order is communicated to such person. Moreover, after taking into account the saving of limitation granted by the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020. The Petitioner would have filed an appeal on or before May 29, 2022. However, the Petitioner filed appeal on August 08, 2022 with a delay of two months nineteen days from the date on which even the limitation period as stipulated by the Hon'ble Supreme Court, expired.

Aggrieved by the Appellate Order the Petitioner filed writ before the Hon'ble Patna High Court, The High Court dismissed the writ by stating that they do not find any reason to invoke the extraordinary jurisdiction under Article 226 of Constitution of India, especially when the Petitioner had alternate remedies available and the Petitioner was not diligent in availing such alternate remedies within the stipulated time.

Aggrieved by the Order of the Hon'ble Patna High Court the Petitioner filed SLP before the Hon'ble Supreme Court.

Held:

The Hon'ble Supreme Court in ***Special Leave to Appeal (C) No(s). 15594 of 2023*** held as under:

- Upheld the order of the Hon'ble Patna High Court and rejected the SLP and stated that the Petitioner delayed in approaching the Appellate Authority therefore, the High Court was justified in dismissing the writ Petition.
- The Hon'ble Patna High Court dismissed the writ and stated that they do not find any reason to invoke the extraordinary jurisdiction under Article 226 of Constitution of India, especially when the Petitioner had alternate remedies available and the Petitioner was not diligent in availing such alternate remedies within the stipulated time.

Our Comments:

Indeed, the High Court has the authority to decide whether to accept or reject a writ petition under Article 226 of the Constitution of India. However, the Hon'ble Supreme Court in the case of ***Magadh Sugar & Energy Ltd. v. State of Bihar LL 2021 SC 495*** held that existence of alternate remedy does not bar exercise of writ jurisdiction if order is challenged for want of jurisdiction. The bench also noted that there are exceptions to the rule of alternate remedy arise, the court which are: (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

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