IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10809 of 2016

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M/s Aman Enterprises, a prorpetorship Firm, having its place of business at Balia Anant, Kamtaul, P.S. - Kudhani, District Muzaffarpur, through its proprietor Ram Sahay Singh son of Gena Singh resident of Balia Anant, Kamtaul, P.S. Kudhani, District Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Commissioner of Commercial Taxes, Bihar, Patna.
3. The Joint Commissioner of Commercial Taxes (Appeal), Tirhut & Saran Division, Muzaffarpur.
4. The Assistant Commissioner of Commercial Taxes, West Circle, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suraj Samdarshi

For the Respondent/s : Mr. Lalit Kishore – PAAG and
Mr. Vikas Kumar, S.C. 11

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 16-08-2016

The order dated 17th of March, 2016 passed by the Joint Commissioner of Commercial Taxes (Appeal), Tirhut and Saran Division, Muzaffarpur is subject matter of challenge in the present writ petition. By the aforesaid order, an appeal filed by the petitioner against the order of assessment dated 24th of July, 2015 relating to assessment year 2013-14 was not entertained for the reason that the Input Tax Credit on account of the petitioner is not liable to be adjusted against the tax payable by the petitioner as a condition of pre-deposit of Tax as required before an appeal is entertained.

2. Learned counsel for the petitioner refers to a judgment of this Court in the case of **M/S. Kanhaiya Traders Vs. the State of Bihar and others reported in 2016(3) PLJR, 205** to contend that while considering deposit of 20% of the tax amount assessed under section 72(2) of the Bihar Value Added Tax, 2005, as pre condition for filing appeal, the amount of input tax is liable to be considered for set off against the required payment of 20% of the tax assessed.

3. We find that the order passed by the appellate authority rejecting the adjustment of input tax credit of the petitioner against the pre condition of deposit of 20% of the tax assessed is not justified because the appellate authority has not given any reason as to why such Input Tax Credit cannot be adjusted. The learned appellate authority has reached to the conclusion that Input Tax Credit cannot be adjusted but why it cannot be adjusted has not been discussed by the learned appellate authority.

4. In view of the order passed by this Court in the case of Kanhaiya Prasad (Supra), the claim of the petitioner for adjustment of input tax credit against the requisite amount towards pre condition merits acceptance. Thus, the order dated 27th of March, 2016 passed by the learned Joint Commissioner of Commercial Taxes

(Appeal), Tirhut and Saran Division, Muzaffarpur is set aside and the matter is remanded back for re-consideration in the light of the judgment referred to above, in accordance with law.

5. This writ petition is allowed accordingly.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Amin/-
N.A.F.R.

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