IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22975 of 2018

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M/s Kumar Sanjay, a Proprietorship Firm having its office at & P.O. - Mahana (Near Punrani Durga Asthan), P.S. & District – Begusarai, through its Proprietor Kumar Sanjay, S/o Sri Sahdeo Prasad, resident of at & P.O. - Mahana (Near Punrani Durga Asthan), P.S. & District – Begusarai.

... ... Petitioner

Versus

1. The Union of India through the Principal Commissioner of Central Excise & Service Tax, 3rd Floor, Central Revenue (Annexe) Building, Birchand Patel Path, Patna – 1.
2. The Principal Commissioner of Central Excise & Service Tax, 3rd Floor, Central Revenue (Annexe) Building, Birchand Patel Path, Patna – 1.
3. The Commissioner (Appeals), Central Excise & Service Tax, 3rd Floor, Central Revenue (Annexe) Building, Birchand Patel Path, Patna – 1.
4. The Joint Commissioner, Central Excise & Service Tax, 3rd Floor, Central Revenue (Annexe) Building, Birchand Patel Path, Patna-1.
5. The Assistant Commissioner, Central Excise & Service Tax, Division Patna -II, Central Revenue (Annexe) Building, Birchand Patel Path, Patna – 1.
6. The Assistant Commissioner, Central GST & Central Excise Division, Begusarai, District – Begusarai.
7. The Superintendent, Central Excise & Service Tax, Begusarai Range, Begusarai.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Raj Kishore Prasad, Advocate
For the Respondent/s	:	Mr. Alok Kumar Agarwal, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 11-12-2018

Heard Mr. Raj Kishore Prasad, learned counsel for the petitioner and Mr. Alok Kumar Agarwal, Retained Counsel representing the Department of Central GST and Central Excise.

It is feeling aggrieved by order dated 31.05.2018 of the Assistant Commissioner, Central GST & Central Excise, Begusarai Divison whereby the writ petitioner was asked to deposit a sum of Rs. 14,01,860.00 which includes the amount of service tax as well as penalty together with interest recoverable under Section 87 of the Finance Act, 1994, the writ petitioner is before this court.

Mr. Raj Kishore Prasad, learned counsel appearing for the writ petitioner fairly informs that feeling aggrieved by the order the writ petitioner has also preferred statutory appeal which is pending consideration before the respondent no. 3, Commissioner (Appeals). He further submits that an interim prayer for stay of the impugned demand was made before the Appellate Authority which has not been entertained, and hence this writ petition.

Mr. Alok Kumar Agarwal, while objecting to the submission of Mr. Raj Kishore Prasad, learned counsel for the petitioner, regarding non-entertainment of the prayer of interim relief submits that there is nothing on record of the writ petition which would show that any attempt was made by the writ petitioner for seeking interim relief.

Obviously, the writ petitioner having already taken recourse to the statutory remedy, he cannot be allowed to pursue two forums on the self-same grounds. We also take note of the predicament of the petitioner but since the matter is yet pending before the Appellate Authority, we refuse to express our opinion thereon for the present. We are persuaded to direct the Commisisoner (Appeals) to consider the appeal filed by the petitioner against the demand notice in question and dispose of the same in accordance with law after affording an opportunity of hearing to the petitioner, and in the nature of the demand made, let the appeal be disposed expeditiously and preferably within a period of three months from the date of receipt/production of a copy of this order.

Learned counsel for the petitioner, if so advised, can make a prayer for interim relief by filing appropriate application to that effect and the respondent no. 3, Commissioner (Appeals) would consider the prayer of the petitioner for interim relief and dispose of the same in accordance with law within a period of two weeks from the date of filing of such application.

It goes without saying that no coercive measures would be taken by the Department to enforce the demand in question until disposal of the interim application.

With the observation and direction aforementioned, this writ petition is disposed of.

(Jyoti Saran, J)

(Rajeev Ranjan Prasad, J)

Arvind/Rajeev

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	19.12.2018
Transmission Date	