IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7832 of 2018

M/s Dr. Zakir Husain Institute, Behind SSLNT Women College, Luby Circular Road, Dhanbad having its Head Office/ Principal Officer at Bailey Road, Hartakli More, Patna, through its Authorized Signatory/ Director Prof Uttam Kumar Singh S/o Late Anand Shasti, Resident of Jagat Amrawati Apartment, P.S.- Kotwali, District- Patna.

... ... Petitioner/s

Versus

1. The Chief Commissioner, Central Excise and Service Tax, Bihar and Jharkhand, 1st Floor Central Revenue (Annex.) Building, Vir Chand Patel Path, Patna, Bihar.
2. The Commissioner (Appeal), Central Excise and Service Tax, Patna, Birchand Patel Path, P.S. Kotwali, District Patna.
3. The Assistant Commissioner, Central Excise & Service Tax, Division Deoghar- I, Jharkhand.
4. The Commissioner, Central Excise & Service Tax, H E School Road, Vistipara, Dhanbad, Jharkhand.
5. The Superintendent, CGST & Central Excise Range, Deoghar, Jharkhand.
6. The Assistant Commissioner, CGST & Central Excise, Deoghar, Jharkhand.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mrs. Nivedita Nirvikar, Advocate Mr. Manoj Kumar, Advocate
For the Respondent/s	:	Mr. Satya Prakash Tripathy (Sr. SC. Central Excise And Service Tax) and Mr. Satya Vrat, Advocate

---

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 01-05-2018

Having heard learned counsel for the parties, we are of the considered view that so long the assessment order, Annexure P/3 dated 14.9.2016, is in operation, merely because certain orders have been passed by the Custom, Excise and Service Tax Tribunal, Calcutta in the matter of tax liability on 23.08.2017 vide Annexure P/9, it is not appropriate for this Court to interfere into the matter directly exercising its extraordinary jurisdiction under Article 226 and 227 of the Constitution. Petitioner may prima facie be correct in saying that the demand now raised or the recovery in question is unsustainable in view of the law laid down by the Tribunal in Annexure P/9.

Learned counsel invited our attention to Annexure P/3 the claim of the petitioner not to implement the order passed by the Tribunal and not to insist on demand, but the same has been rejected recently, as is evident from Annexure 6 dated 8.2.2018. That being the position, the petitioner can very well file an appeal before the competent Appellate Authority, namely, the Commissioner and seek indulgence into the matter.

Accordingly, we dispose of the matter with the following direction:

> "In case, the petitioner prefers an appeal challenging the order of assessment Annexure- P/3 dated 14.9.2016 within a period of 30 days from today,

the appellate authority shall dispose of the matter in accordance with law taking note of the law laid down by the Tribunal, as is evident from Annexure- P/9 dated 23.8.2017, and decide the appeal by a speaking order. Till the decision of the appeal is not rendered by the appellate authority, all coercive steps for recovery of the amount shall be kept in abeyance."

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15.05.2018
Transmission Date	