IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10890 of 2018

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RECON a Proprietor Firm, through its sole proprietor namely Prabhat Kumar, address at Sudha Sadan, West of Gandhi Murti, Dujra, P.S.- Buddha Colony, District- Patna, Pin – 800001.

.... Petitioner/s

Versus

1. The Union of India through Commissioner CGST & Central Excise, New Delhi.
2. The Commissioner, Service Tax, Central Revenue Building, Bir Chand Patel Path, Patna, Pin – 800 001.
3. The Joint Commissioner, Service Tax, Central Revenue Building, Bir Chand Patel Path, Patna, Pin – 800 001.
4. The Dy. Commissioner, Service Tax, Central Revenue Building, Bir Chand Patel Path, Patna, Pin – 800 001.
5. The Asst. Commissioner, Service Tax, Central GST & Excise Commissioner's Office, Central (middle) Zone, Chandpura, Bank Road, Gandhi Maidan, Patna – 800 001.
6. The Asst. (Adjudication), Service Tax, Central GST & Excise Commissioner's Office, Central (middle) Zone, Chandpura, Bank Road, Gandhi Maidan, Patna – 800 001.
7. The Superintendent of Service Tax, Central GST & Excise Commissioner's Office, Central (middle) Zone, Chandpura, Bank Road, Gandhi Maidan, Patna – 800 001.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uma Shankar Prasad, Sr. Advocate
Mr. Dr. Anshuman, Advocate
Mr. Kamala Kant Tiwary, Advocate

For the Respondent/s : Mr. S. D. Sanjay, Sr. Advocate
Addl. Solicitor General
Mr. Alok Kumar Agrawal, Advocate

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

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)
Date: 27-06-2018

Inter alia contending that in spite of depositing the entire service tax due, as is claimed in the demand notice issued, a demand has been raised for payment of dues and that also without serving a copy of the impugned order imposing liability for paying the service tax and without hearing the petitioner.

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Inviting our attention to Annexure-P 3, the tabulated chart showing the service tax for various periods and further contending that copy of the order based on which the liability has been imposed has not been served this writ petition has been filed with a prayer to issue notice to the respondents and till then protective orders be passed which includes release of the bank account of the petitioner which has been seized by the impugned order.

On the last date, i.e. on 20.6.2018 we had directed for listing of the matter today and Shri S.D. Sanjay, learned A.S.G., was directed to seek instruction. On instruction, a counter affidavit has been filed by the Revenue today and from the documents available on record adjudication order was passed vide Annexure C. Thereafter vide Annexure D, the dispatch register of the Department, it is stated that the order was communicated to the petitioner by speed post on the next date itself and documents have been filed vide Annexure D, a certificate issued by the Department of Posts and Delibery, Patna indicating that the order which was dispatched through speed post on 9.11.2017 was served on the petitioner on 13.11.2017.

Keeping in view the aforesaid factual dispute with regard to the service of the impugned order on the petitioner, we see now ground now to interfere into the said disputed questions of fact in a petition under Article 226 when petitioner has statutory remedy

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of appeal before the Appellate Authority where all these factual disputes of the matter can be adjudicated and a decision taken.

Keeping in view the aforesaid, for the present, in view of the nature of allegations made and rebuttal of the same, as has come on record, on the basis of the counter affidavit of the Revenue, we see no reason to make indulgence in the matter. Instead, we grant liberty to the petitioner to file an appeal before the statutory Appellate Authority within 15 days from today, seek condonation of delay and it would be for the Appellate Authority to decide the same on merit, including the question of delay in filing of the appeal.

So far as the coercive action of seizure of the bank account is concerned, we grant liberty to the petitioner to seek interim stay of the same in the appeal and the Appellate Authority is directed to decide the I.A. for stay on the same day when the appeal is presented for hearing before the Appellate Authority.

With the aforesaid, this application is disposed of.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

K.C.jha/-N.H.

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06-07-2018
Transmission Date	N/A

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