IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9716 of 2017

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M/s Usha Lata Welfare Society Barari Guru Bazar Distrct- Katihar, Pin 854104 (Bihar, through its Presdient Mithilesh Kumar, son of Sri Krishna Mohan Prasad resident of village - Barari, P.S. Barari, District - Katihar (Bihar).

... ... Petitioner/s

Versus

1. The Union Of India through the Commissioner of Central Excise and Service Tax having its Office at Central Revenue Building Beerchand Patel Marg, Patna
2. The Joint Commissioner, Central Excise and Service Tax, Patna.
3. The Assistant Commissioner, Central Excise and Service Tax Division, Bhagalpur.
4. The Superintendent, Central Excise and Service Tax Range, Purnea.
5. The Superintendent Adjn, Central Excise and Service Tax Division, Bhagalpur.
6. The State of Bihar through the Principal Secretary, Health Department, Govt. of Bihar, Patna.
7. The District Magistrate, Saharsa.
8. The District Magistrate, Madhepura.
9. The District Magistrate, Katihar.
10. The District Magistrate, Araria.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amarnath Jha

For the Respondent/s : Mr. Rajesh Kumar Verma

ORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 05-02-2019

Heard Mr. Amarnath Jha, learned counsel appearing for the petitioner and Mr. Rajesh Kumar Verma, learned Senior Standing Counsel for the Central Excise and Service Tax Department i.e. respondent nos. 1 to 5 herein.

The petitioner has questioned the order dated 24.04.2017, passed by the respondent-Assistant Commissioner, Central Excise and Service Tax confirming the demand of service tax impugned at Annexure-6 to the writ petition.

Mr. Verma, learned counsel appearing for the department raises a preliminary objection on the plea of appellate remedy available to the petitioner under section 85 of the Finance Act, 1994 before the Collector, Central Excise (Appeals). He submits that since the order was passed prior to the enforcement of Central Goods and Service Tax Act, 2017, which came in to effect on 01.07.2017, the appeal against the assessment order passed prior thereto, would continue to be governed by the provisions of the Finance Act, 1994, which makes every such order passed by the Assessing Authority appealable under section 85.

Mr. Jha, learned counsel appearing for the petitioner submits that the period of filing such appeal is only 60 days, as manifest from the order impugned at Annexure-6, which has expired in the meanwhile. Mr. Jha, learned counsel for the petitioner submits that petitioner had approached this Court within the prescribed period of sixty days for filing the appeal as the present writ petition was filed on 22.06.2017, but the same was registered subsequently.

Having heard learned counsels for the parties, we are persuaded to uphold the preliminary objection raised by Mr. Verma on the plea of alternative remedy of appeal available to the petitioner under section 85 of the Finance Act, 1994. Accordingly, petitioner is given liberty to approach the appellate authority under section 85 of the Finance Act, 1994 and to raise all issues, as raised herein, as well as any other issue which he is advised to raise, and it goes without saying that any such appeal filed by the petitioner within 30 days from today if accompanied with a petition for condonation of delay, shall be considered by the appellate authority and disposed of in accordance with law with due opportunity of hearing to the petitioner as well as the departmental representative, without being prejudiced by the delay or the order passed herein.

In the nature of dispute raised, let the appeal so filed be disposed of within 3 months of its filing.

The writ petition stands disposed of with the above observations/directions.

(Jyoti Saran, J)

(Arvind Srivastava, J)

mcv/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.02.2019
Transmission Date	NA