IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1260 of 2019

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M/M Avantika Contractors (I) Ltd., NIPC, Barch Campus, STPP, Barh, Patna having their registered office at Door No. 8-2-603/23/3 & 15, 3rd Floor, H S R Summit, Beside No.1 News Channel, Road No.10, Banjara Hills, Hyderabad through their authorized representative Ajay Kumar Singh, Male, 47 years, son of Late Surenbdra Prasad Singh, Resident of Soubhag Sharma Path P.S. Rupaspur, Dist.-Patna

... ... Petitioner

Versus

1. The Commissioner of Central GST and Central Excise, Patna II Commissionorate, Central Revenue Building, Birchand Patel Marg, Patna
2. The Joint Commissioner Central Excise & Service Tax, Patna, Central Revenue Building, Birchand Patel Marg ,Patna
3. The Assistant Commissioner, Central GST, Patna (East) Division, Patna, Central Revenue Building, Birchand Patel Marg. Patna
4. The Superintendent, Central Excise & Service Tax, Fathua Circle, Ex Range, Ist.Floor Raghuvansh Complex, Station Road, Fathua
5. The Branch Manager, Axis Bank Ltd. Udaiman Apartment Boring Road, Patna
6. The Commissioner (Appeals), Customs, Central Excise & Service Tax, Patna

... ... Respondents

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Appearance :

For the Petitioner/s : Mr. Sandeep Kumar, Adv.
Mr. Ritesh Kumar, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 24-01-2019

Heard Mr. Sandeep Kumar, learned counsel for the petitioner and Mr. S.D.Sanjay, learned Addl. Solicitor General for the respondents appearing with Mr. Alok Kumar Agrawal.

The petitioner by way of this writ petition questions the order dated 14.12.2018 of the respondent Assistant Commissioner, Central GST, Patna addressed to M/s Axis Bank asking them to

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discharge their obligation as cast under the department's letter no. 383 dated 28.02.2018 pursuant to the adjudication order dated 19.08.2016 passed by the Joint Commissioner, Central Excise & Service Tax, whereby demands towards Service Tax was raised against the petitioner under the Central Excise Act, 1944 read alongside the provisions of the Finance Act, 1994.

Pleadings on record confirm that the petitioner had earlier approached this Court through CWJC No. 6009/2018 questioning the notice issued under Section 87 of the Finance Act, 1994. The writ petition was dismissed as withdrawn with liberty to the petitioner to pursue his statutory remedy of appeal as available under the statute. The Division Bench however recorded that they had not expressed anything on the merits of the contest. It is following the dismissal of the writ petition that the notice in question has been issued on 14.12.2018 and the petitioner has returned to this Court through the writ petition in question.

Two submissions have been made by Mr. Sandeep Kumar to pray for stay of the notice of adjustment issued under Section 87 of the Finance Act, 1994, namely;

(a). That an appeal against earlier adjustment notice dated 28.02.2018 is pending before the Commissioner (Appeals) since 15.03.2018 and following the order passed by the Division

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Bench which accorded liberty to the petitioner to pursue statutory remedy in the earlier round of litigation in C.W.J.C.No. 6009/2018 that an appeal to question the order of the Joint Commissioner dated 19.8.2016 which is the foundation for the notice under Section 87 of the Finance Act, 1994 impugned at Annexure-2 herein has been filed on 29.10.2018 and also has since been registered on 02.01.2019 after removal of the defect.

(b). It is because the appeals so filed by the writ petitioner remains pending and have not been disposed as yet that the notice dated 14.12.2018 impugned in this writ petition has been issued in the meanwhile and thus having no option the petitioner has again moved this Court for interim protection until disposal of the two appeals which are pending.

It is stated at the Bar by Mr. Sandeep Kumar that the appeals were posted for 18th of January, 2019 but in the meanwhile the writ petition has been filed.

Mr. Sanjay, learned Addl. Solicitor General, opposing the prayer for the interim relief so made by Mr. Sandeep Kumar submits that the issue has already once been deliberated upon by this Court and thus no indulgence be granted and now that the appeals are filed and are pending before the Commissioner

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(Appeals), the parties may be accordingly directed to cooperate in expeditious disposal of the same.

We have heard learned counsel for the parties and have perused the records and since according to the learned counsel for the petitioner, the hearing of the appeal is kept pending subject to the outcome of the present proceeding, for the present, without expressing ourselves on the merits of the contest we would only direct the Commissioner (Appeals) (respondent no.6) to hear and dispose of the appeal expeditiously and preferably within six weeks from the date of receipt/ production of a copy of this order.

It goes without saying that the parties would cooperate in expeditious disposal.

The writ petition stands disposed of with the directions above.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Archana/
Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.02.2019
Transmission Date	NA

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