IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8575 of 2019

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M/s. Bharat Enterprises A Proprietorship Firm, having its place of business at Rajendra path, Babunia Road, Siwan, through its Proprietor, Munna Pandey, aged about 50 years (Male), Son of Shri Ram Bilas Pandey, resident of 112, Langarpura, P.O.- Langarpura, P.S.- Mairwa, District- Siwan.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Commissioner of Commercial Taxes Bihar, Patna.
3. The Deputy Commissioner of commercial Taxes (Incharge) Siwan Circle, Siwan.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Suraj Samdarshi, Adv.
For the Respondent/s	:	Mr.Vikash Kumar,SC11

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 24-04-2019

Heard Mr. Suraj Samdarshi, learned counsel for the petitioner and Mr. Vikash Kumar, S.C.11 for the State.

The petitioner is aggrieved by the order dated 29.12.2018 passed by the Joint Commissioner, Commercial Taxes (Appeal) Saran Division, Muzaffarpur whereby the appeal preferred by the petitioner has been rejected on grounds that the petitioner has failed to deposit 20% of the assessed tax as required under Section 72(2) of the Value Added Tax Act, 2005 and the Rules framed thereunder.

Learned counsel for the petitioner has invited our attention to the orders passed by a coordinate bench in the case of **Ms. Kanhaiya Traders v. State of Bihar & Ors.** since reported in **2016 (3) PLJR 205** as also an order passed in C.W.J.C. No. 10809 of 2016 **(M/s Aman Enterprises versus State of Bihar & Ors.)** to submit that identical issues of rejection of appeal for failure of the assessee to deposit 20% of the assessed amount when fell for consideration before the Court, this Court taking note of the input tax credit amount deposited by the petitioner which had not been adjusted and which was more than 20% of the assessed amount, quashed the rejection orders to remit the matter to the appellate authority to decide the appeal on merits. Learned counsel has invited our attention to the details of the input tax credit which is to the tune of Rs. 24, 88,655/- at Annexure-5 to the writ petition to submit that this amount is greater than the 20% of the appeal amount and thus following the position settled by this Court in the judgments taken note of above, the order of the Joint Commissioner, Commercial Taxes become unsustainable.

We have heard learned counsel for the parties and we have perused the records and though opposition is coming from the learned State counsel to refer to the statutory mandate but bearing note of the opinion expressed by the coordinate bench in the case of **M/s Kanhaiya Traders** (supra) and **Aman**

Enterprises (supra) and also taking note of the fact that the input tax credit to the name of the petitioner is far greater than the appeal fee of 20% assessed amount, we are persuaded to follow the legal position settled by this Court and accordingly quash the order dated 29.12.2018 passed by the Joint Commissioner, Commercial Taxes (Appeal) Saran Division, Muzaffarpur impugned at Annexure-3 to writ petition to remit the matter to the appellate authority for consideration and disposal of the appeal on merits in accordance with law preferably within a period of 8 weeks. The petitioner would appear before the appellate authority along with copy of this order on 06.05.2019 at 11 A.M. and when he shall proceed to dispose of the matter in the manner stipulated above.

The writ petition is allowed.

(Jyoti Saran, J)

(Anjani Kumar Sharan, J)

Bibhash

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27.04.2019
Transmission Date	NA