IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19805 of 2018

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Shree Mahavira Buildwell Pvt. Ltd. a Company incorporated under the Companies Act 1956 having its office at Mahaveera Enclave G-2,Behind Prema Honda Show Room,Exhibition Road,Distt.-Patna through its Director Vishal Agrawal Son of Shri Mahabir Prasad Aggrawal Resident of Flat No. D3,Gupteshwar Mansion, Nageshwar Colony, P.S. Buddha Colony, Distt.-Patna

... ... Petitioner/s

Versus

1. Commissioner of Central G S T & Central Excise, Patna having its Office at Central Revenue Building,Bir Chand Patel Marg,Patna
2. Principal Commissioner of Central Excise & Service Tax,Patna having its Office at Central Revenue Building, Bir Chand Patel Marg,Ptna
3. Commissioner of Central Excise & Service Tax, Patna having its Office at Central Revenue Building, Bir Chand Patel Marg, Patna
4. Superintendent of Central GST & Central Excise, Patna

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.D.V. Pathy, Adv.
For the Respondent/s : Mr.Anjani Kumar Sharan, ASG

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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 : 08-01-2019

The petitioner questions the order dated 27.06.2018 impugned at Annexure-6 passed by the respondent No. 1 confirming the demand of service tax for the period 2011-12, 2012-13, 2013-14 and 2014-15.

Mr. Anjani Kumar Sharan, learned counsel appearing for the respondent Department informs that the order is appealable.

Mr. D.V. Pathy, learned counsel for the petitioner in trying to distinguish the case from the objection taken of alternative remedy, raises three issues for seeking indulgence by this Court without relegating the petitioner to the remedy of statutory appeal, namely:

(a) That the show cause notice is premeditated and in the nature of post-decisional show cause.

(b) The show cause notice is issued beyond the period of limitation as prescribed under Section 73(2) of the Finance Act, and

(c) The Exemption notification dated 24.05.2010 and 20.06.2012 enclosed with Annexure-4 series have not been considered.

Mr. Sharan has invited our attention to the order impugned at Annexure-6 to demonstrate that there is application of mind by the authority to reject the claim so put forth. According to Mr. Sharan all the issues as raised by Mr. Pathy have been dealt and if the petitioner is not satisfied it can be raised by the petitioner in the statutory appeal so available under the Finance Act.

We are in agreement with the objection so taken by Mr. Sharan and thus while allowing the petitioner to raise all the issues so raised herein or any other issue, in the statutory appeal so available to him under the Finance Act, we dispose of the writ petition.

Mr. Pathy informs that the statutory period for filing such appeal has expired while the matter is pending consideration before this Court.

We grant 4 weeks time to the assessee to exhaust such remedy so available and should any appeal be filed within 4 weeks from today accompanied with the petition for condonation of delay, the appellate authority shall consider the same on its own merits and dispose of the same in accordance with law without being prejudiced by the outcome of the present proceeding and bearing in mind the pendency of the matter before the High Court. The petitioner would be at liberty to pray for interim relief which shall be considered accordingly.

Let the Department take no coercive measures in 4 weeks next, pursuant to the order impugned.

With the observations, the writ petition is disposed of.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Bibhash/Ranveer

AFR/NAFR	
CAV DATE	NA
Uploading Date	09.01.2019
Transmission Date	NA