IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5500 of 2021

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Irfan Akhtar, Son of Late Mohd. Nizamuddin Resident of Ward No. 19, Babui Tola, Bankatawa, Police Station- Bagaha, District- West Champaran.

... ... Petitioner/s

Versus

1. The Union of India Through Principal Secretary, Finance, Government of India, New Delhi.
2. The Director G.S.T., Central Revenue Building, Patna.
3. The State of Bihar Through Secretary, Road Construction Department, Government of Bihar, Patna.
4. The Joint Commissioner of State Tax Bagaha Anchal, Bagaha, West Champaran.
5. The Assistant Commissioner of State Tax Bagaha, Tirhut, West Champaran.
6. The Executive Engineer Rural Works Department, Jhanjharpur Sub-Division, Bagaha, West Champaran.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gopal Govind Mishra, Advocate
For the UoI	:	Mr. Dr. K. N. Singh, ASG
		Mr. Anshuman Singh, Sr. SC, CGST
		Mr. Sriram Krishna, JC to ASG
For the State	:	Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 30-11-2021

Heard learned counsel for the parties.

The petitioner has prayed for the following relief/s :-

> (I) For issuance of writ in the nature of certiorari for quashing the Demand Notice dated 09.01.2021 issued vide Memo No.507 under the signature of Joint Commissioner State Tax, Bagaha Circle, Bagaha in East

Champaran District enclosing the notice dated 25.01.2020 issued vide Reference No.ZA100120115120 under Section 51 of Bihar Goods Sale Tax (BGST) Act 2017 and further notice issued vide reference No.ZA100120011523R dated 25.01.2020 under Section 51 of B.G.S.T. Act 2017 alongwith notice issued vide Reference No.ZD101220014777Y dated 16.12.2020 under Section 73(1)/74(1) of B.G.S.T. / C.G.S.T. Act 2017 read with Rule 142(1) of B.G.S.T. / C.G.S.T. Rules 2017 whereby and whereunder the authority under the law imposed penalty upon the petitioner under the B.G.S.T./C.G.S.T. Act at the place of VAT in the light of agreement dated 02.06.2016 and work done by the petitioner and the payment has made by the government of Bihar in the light of implementation of G.S.T. Act.

(ii) For issuance of writ in the nature of mandamus for commanding the respondent authority for payment of if any taxes due in the light of VAT/service taxes which was implemented prior to G.S.T. Act.

(iii) For direction to the respondent authorities to grant proper time for filing show cause and opportunity of hearing prior to infringement of account of petitioner.

(iv) For any other relief/reliefs admissbile under the law in the light of factual profile of the case."

It is submitted on behalf of the petitioner that they are registered contractor under the Government of Bihar, Building Construction Department. An agreement was entered with the

BCD for construction of road under the Prime Minister Gramin Sadak Yojna for which an agreement was executed on 13.06.2016 and thereafter they executed the work and submitted bill in which 1% GST and 1% CGST was deducted by the authority. However, subsequently a notice has been issued by the Commercial Tax Department that they ought to have deducted VAT of 1.5% on the bill submitted by the petitioner and, as such, notices were issued to the petitioner.

However, it is submitted that pursuant to that notice petitioner did not submit any representation or show cause before the concerned authority. As such, a demand notice of remaining tax amount has been issued to him against which he has filed the present petition.

The writ petition is disposed of with a direction to the the petitioner to approach the Assessing Authority along with relevant document and the tax paid and the liability to pay the tax and the terms of agreement which was entered during the VAT period and during the intervening period the GST Act came. As such, there were difference of rate of tax between the VAT regime and subsequent GST regime which has to be resolved by the Assessing Authority after giving due opportunity to the petitioner to represent his case and also he can submit the required document and the amount of tax already paid to him.

With such observation and direction, petition is disposed of.

Interlocutory application, if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Ashwini/Sanjay

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.12.2021
Transmission Date	NA