IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5495 of 2020

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Gammon Enginners and Contractors Pvt. Ltd. an incorporated Company having its Branch Office Upasana Ground Floor, House of Shri P. N. Rai, S.K. Puram Lane No. 2, Danapur, Patna- 801503 through its authorized representative namely Rajiv Kumar Son of Shri Arun Kumar Shahi Resident of Flat No. 301, Sarnam Villa, West Patel Nagar, Patna- 800023

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Joint Commissioner of State Texes, Patliputra Circle, Patna.
3. The Deputy Commissioner of State Taxes, Patliputra Circle, Patna.
4. The Assistant Commissioner of State Taxes, Patliputra Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Advocate

For the Respondent/s : Mr.Vikash Kumar, SC-11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-01-2021

Let the name of learned counsel for the petitioner be read as “Mr. Gautam Kumar Kejriwal” in place of “Mr. Arvind Kumar Kejriwal”. Accordingly, order dated 18.12.2020 stands modified to that extent only.

Petitioner has prayed for the following relief(s):-

> “a) For issuance of writ or order in the nature of certiorari for quashing of the order number

ZA100220024174L dated 22.02.2020 passed by the respondent number 2 (hereinafter referred to as the assessing authority short) under section 75 (12) read with section 50 (1) of the Bihar Goods And Services Tax Act 2017 (hereinafter referred to as the act for short), act for short),Central Goods And Services Tax Act 2017, read with section- 20 of the Integrated Goods And Services Tax Act 2017 and the consequential demand notice issued in form GST DRC – 07 dated 22.02.2020;

b) For holding and a declaration that the impugned order number ZAl00220024174L dated 22.02.2020 and the consequential demand notice is wholly without jurisdiction and is unsustainable in the eye of law;

c) For further holding and a declaration that in absence of the Jurisdictional fact necessary for exercise of power under section 50 read with section 75 (12) of the act the respondent assessing authority could not have passed the impugned order and the consequential demand notice which is accordingly without jurisdiction and liable to be quashed by this Hon'ble court;

d) For further holding and a declaration that the case of the petitioner is squarely covered by the judgement dated 06.01.2020 of Hon'ble Madras High Court in the matter of Refex Industries limited Vs Asst Commissioner of CGST and Central Excise wherein it has been held that the liability of interest under section 50 of the act would be attracted only in case of the tax liability discharged from out of the cash ledger;

e) For further holding and a declaration that no liability of interest would be attracted in the case of the petitioner when the credit balance existing in the electronic credit ledger of the petitioner is quite surplus to meet the tax liabilities admitted by the petitioner in the returns filed for the respective months;

f) For further holding and a declaration that in case the petitioner has already furnished the return and made payment of tax liablities in terms of section 39(7) of the act no liability of interest would be attracted in terms of section 75(12) of the act;

(g) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case.”

In view of the stand taken by the State vide its affidavit dated 09.01.2021 affirmed by Mr. Gautam Kumar

Kejriwal, learned counsel for the petitioner, we close the present proceedings taking on record the averments made by the deponent, part of which are reproduced as under:

> 11. That post issuance of Notification-no-63/2020 dated 25th August 2020 by the central government a press release was issued by Ministry of Finance, Govt of India on 26.08.2020 wherein it was clarified that amendment in section 50(1) has been made effective prospectively w.e.f. 01.09-2020 due to certain technical limitations, however for present no recoveries for interest charged on gross liability will be recovered for the past period as well by the central and state tax administration.
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> 12. That in the light of aforesaid submissions, it is stated that no recovery will be made for interest charged on delayed payment of tax which has been made by the taxpayer debiting the credit ledger.
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> 13. That however, in terms of amended section – 50 (1), it is prayed before the Hon'ble court that the taxpayer may be directed to pay the interest on delayed payment of tax which has been made by debiting the cash ledger that is on net liability.

Additionally, our attention is invited to the circular issued by the Central Board of Indirect Taxes & Customs (CBIC), which reads as under:-

> "Interest on delayed payment of GST:CBIC
>
> Posted on 26th August 2020 5:34 PM by PIB Delhi
>
> Central Board of Indirect Taxes & Customs

(CBIC) today clarified that the Notification No. 63/2020-Central Tax dated 25th August 2020 relating to interest on delayed payment of GST has been issued prospectively due to certain technical limitations. However, it has assured that no recoveries shall be made for the past period as well by the Central and State tax administration in accordance with the decision taken in the 39th Meeting of GST Council. This will ensure full relief to the taxpayers as decided by the GST Council.

CBIC explanation came in response to an assortment of comments in the social media with respect to notification dated 25th August 2020 regarding charging of interest on delayed payment of GST on net liability (the tax liability discharged in cash) w.e.f. 1st September 2020."

As such, the petition is disposed of in the aforesaid terms.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	15.01.2021
Transmission Date	