IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10668 of 2020

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Kashish Developers Limited, Registered office at - 87 Old AG Colony, Kadru Ranchi, Jharkhand- 834002, Local address at - 201, Kamla Sadan Apartment, Punai Chak, District - Patna, through its Director Mukesh Kumar, aged about 45 years, Gender-Male, Son of Sri Mukut Prasad Rao, Resident of 171, Mushahari, Bijbaniya, P.S.- Lauriya West Champaran, District - West Champaran.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Chief Commissioner, State Tax, Bihar, Patna.
2. The Chief Commissioner, State Tax, Bihar, Patna.
3. The Joint Commissioner, State Tax, Patna Central Circle, Patna.
4. The Deputy Commissioner, State Tax, Patna Central Circle, Patna.
5. The Principal Secretary-cum-Commissioner, Building Construction Department, Government of Bihar, Patna.
6. The Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Building Construction Department, Government of Bihar, Patna.
7. The Chief Engineer, Bihar Police Building Construction Corporation, Government of Bihar, Patna.
8. The Superintending Engineer, Bihar Police Building Construction Corporation, Purnea Division, Purnea.
9. The Executive Engineer, Bihar Police Building Construction Corporation, Purnea Division, Purnea.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kundan Kumar, Advocate
		Mr. Ranjeet Kumar, Advocate
		Mr. Santosh Kumar, Advocate
		Mr. Yogesh Kumar, Advocate
For the Respondent/s	:	Mr. Vivek Prasad, GP-7

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE A. M. BADAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-10-2021

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

i) For issuance of direction to the respondent authorities to pay the difference/excess amount of tax which the petitioner has paid after implementation of the Central *Bihar* Goods and Services Tax Act, 2017 in light of File No. NRRDA-GO (17)32017-FA dated 06-06-2018 issued by the National Rural Infrastructure Development Agency Ministry of Rural Development, Government of India, New Delhi, **as the Agreement No. 52SBD of 2016-17 was executed on 18.11.2016**, when the Value Added Tax (VAT), 2005, was in force in the State of Bihar and the petitioner received taxes as per the VAT Act, itself but after implementation of GST Act, 2017, w.e.f, 01.07.2017, the petitioner has been forced to pay GST in terms of the Central / Bihar Goods and Services Tax Act, 2017.

ii) For that the respondent authorities be directed to pay Rs.3,284,278.17/-, the excess amount of taxes for the **Financial Year of 2017-18** relating to aforementioned agreement i.e., **52 SBD of 2016-17 dated 18-11-2016,** as the petitioner received total amount of VAT Rs.3,191,825.00/- whereas the petitioner has paid tax as GST of Rs.6,476,103.00/- and therefore, the petitioner would be entitled for amount of GST Rs.6,476,103.00 - 3,191,825.00 = 3,284,278.17/-.

iii) For any other relief for which the petitioner may be deemed entitled to."

After the matter was heard for some time, leaned counsel for the parties jointly prayed that the petition be disposed of with direction to the respondent No. 3 namely the Joint Commissioner, State Tax, Patna Central Circle, Patna to pass an appropriate order as is so required under the provisions of the Goods and Services Tax.

The issue pertains to works contract awarded to the petitioner in the year 2016, in any event prior to the enactment of the Act.

As such, we dispose of the present petition with the following directions:-

(a) We direct the parties to appear before the respondent No. 3 namely the Joint Commissioner, State Tax, Patna Central Circle, Patna on 17.11.2021 at 10:30 A.M.;

(b) The said respondent No. 3 i.e. the Joint Commissioner, State Tax, Patna Central Circle, Patna shall positively take a decision within a period of 08 weeks from the date of appearance of the parties.

(c) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

(d) The respondent no. 3 shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(e) Parties through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(f) The said respondent shall decide the appeal on merits expeditiously, preferably within a period of 08 weeks from the date of appearance of the parties and pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

(g) Liberty reserved to the petitioner to challenge the order, if required and desired;

(h) Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

(i) We are hopeful that as and when petitioner takes recourse to such remedies, before the appropriate forum, the same shall be dealt with, in accordance with law, with a reasonable dispatch;

(j) We have not expressed any opinion on merits and all issues are left open;

(k) Needless to add that if any amount is found due and payable by the petitioner, the same shall be paid within a period of two months thereafter and conversely, if the amount is found payable to the petitioner, the same shall be refunded in accordance with Chapter -11 of the Value Added Tax Act, 2005.

The instant petition sands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, also stands disposed of.

Learned counsel for the respondents undertakes to communicate the order to the appropriate authority through electronic mode.

(Sanjay Karol, CJ)

(A. M. Badar, J)

Sujit/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	03.11.2021
Transmission Date	