IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15231 of 2021

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Ananta Shree Enterprises Private Limited, a company registered under Company Act 1956 having its registered office at House no. 14, Doctor Colony, Kankarbagh, Patna, Bihar - 800020, through its Managing Director, Ashish Kumar Sinha, aged about 42 years, gender - Male, Son of - Sri Surender Kumar Sinha, Resident of - Kanti factory Road, P.O.- - Bhutnath, P.S.- Hanuman Nagar, District - Patna - 800020.

... ... Petitioner/s

Versus

1. The State of Bihar through its Secretary, State Tax Department, Vikash Bhavan, Bailey Road, Patna.
2. The Commissioner, State Tax Department, Vikash Bhavan, Bailey Road, Patna.
3. The Joint Commissioner, State Tax Department, South Circle, Patna.
4. The Commercial Tax Officer, South Circle - Patna.
5. The Assistant Commissioner, State Tax Department, South Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Krishna Mohan Mishra, Advocate
Mr. Prasoon Kumar, Advocate

For the Respondent/s : Mr. Vivek Prasad, GP-7

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

Date : 02-09-2021

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

> "i) To quash and set aside the order (review) passed by respondent no. 5 under section 76 of the VAT Act and Entry Tax Act for the period 2014-15 and also the demand notice dated

05.02.2021 by which the assessing officer has created the demand of Rs.2,60,7391- under VAT Act and Rs.1,69,812/- under Entry Tax Act on the ground that deduction allowed in reassessment order dated 04.04.2018 on account of credit forward input tax and amount of entry tax against the liability under Value Added Tax Act, 2005(here in after referred to as VAT Act) was irregular.

ii) To hold and declare issue of notice and entire proceeding initiated by respondent for review of order dated 04.04.2018 is bad and without jurisdiction because the assessing officer in reassessment order dated 04.04.2018 had allowed credit on account of entry tax and input tax credit after considering the books of accounts and the document however , on same set of fact and material the proceeding u/s 76 of VAT (review) has been initiated for review or order has been passed which is impermissible under the Act.

Iii) To hold and declare the review of order cannot be made as no mistake is apparent from the face of the record rather issue of input credit forward and adjustment on account of entry tax were allowed in the assessment and reassessment order dated 04.04.2018.

iv) To direct the respondent assessing officer to adjust the refund of Rs.2,44,482/- due for the period 2014-15 ad the tax for 2015-16 and further to issue refund of Rs.1,02,051/- for the period 2015-16.

v) To issue any other writ/writs, order/orders, direction/directions as deemed fit and proper.”

After the matter was heard for some time, Mr. Krishna Mohan Mishra, learned counsel appearing on behalf of the petitioner, under instructions, states that petitioner may be permitted to prefer an appeal against the impunged order before the Appellate Authority.

Permission granted.

Shri Vivek Prasad, learned G.P. 7, states that if such an appeal is preferred within a period of two months from today, the issue of limitation shall neither be raised nor allowed to come in the way of adjudication of the appeal on merits.

Statement accepted and taken on record.

As such, petition stands disposed of in the following terms:-

(a) Petitioner is permitted to prefer an appeal within a period of two months from today, if possible, through digital mode;

(b) In the event of appeal being preferred within a period of two months from today, the issue of limitation shall not come in the way of adjudication of the appeal on merits;

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

(d) Petitioner through learned counsel undertakes to fully cooperate and not take unnecessary adjournment;

(e) The Appellate Authority shall decide the appeal on merits, in compliance of the principles of natural justice;

(f) The Appellate Authority shall pass a reasoned and speaking order, copy whereof be supplied to the parties;

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

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

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

(j) If necessary, proceedings during the time of current Pandemic [Covid-19] would be conducted through digital mode;

(k) Liberty reserved to the petitioner to challenge the order, if required and desired.

The instant petition sands disposed of in the aforesaid terms.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.09.2021
Transmission Date	