IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4305 of 2021

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Md. Israil, son of Late Haji Wasimuddin resident of Village Tupamari, P.O. Belwa, Police Station and District- Kishanganj.

... ... Petitioner/s

Versus

1. Union of India through Secretary, Ministry of Finance (Department of Revenue) Government, India, New Delhi.
2. Goods and Service Tax Council through its Chairperson, 5th Floor, Tower- II, Jeevan Bharti Building, Janpath Road, Connaught Place, New Delhi- 110001.
3. Union Minister of Finance acting as Chairperson ESTN, Address North Block, New Delhi- 110001.
4. Directorate General of Goods and Service Tax 5th Floor, MTNL (Telephone Exchange) Building- 8, Bhikaji Kama Place, New Delhi- 110066.
5. Principal Secretary, Department of Finance, Government of Bihar, Patna.
6. Commissioner-cum- Secretary, Directorate of Commercial Taxes, Govt. of Bihar, Old Secretariat, Patna.
7. Assistant Commissioner of State Taxes, Kishanganj, Purnea, Bihar.
8. Principal Secretary-cum- Commissioner, Department Mines and Geology, Govt. of Bihar, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Ranjan, Advocate
For the Respondent/s	:	Dr. K. N. Singh, ASG
		Mr. Anshuman Singh, Sr. S.C. CGST & CX
		Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJAN GUPTA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-10-2021

Petitioner has prayed for the following relief(s):

"1.(a) For a writ of certiorari to quash the demand notice dated 12.12.2020 for the financial year 2017-18 issued under the signature of Assistant Commissioner of State Tax, Kishanganj Purnea, Bihar, whereby a liability of Rs. 50,71,432/ has been fastened on the petitioner purportedly on the ground of short payment of Tax as amount of tax was to be calculated @ 18% treating the mining settlement as lease of land and building under schedule-II and not as 5% which is applicable to sand as per GST rate, which order is wholly without jurisdiction.

(b) For a writ of mandamus commanding the respondent to charge tax which is applicable to sand as per GST Rate vide HSN Code No. 2505, which is 5% since there is a specific provision for charging of levy on sand the general provision of treating it as lease arising out of land and building under schedule-II issued in exercise of power under section 7 wherein Activities (transaction) is treated as supply of goods or services is not applicable as settlement of balughat would not come under the schedule-II as settlement of balughat was entered by the state with the dominant purpose for sale of sand, which in itself is supply of goods and does not require to be treated as goods and thus, the authorities had acted without any authority of law in imposing the additional tax liability.

(c) For a declaration that the show cause notice dated 27.08.2020 is invalid and illegal as it does not refer to any provision of the Act or Rule by which the allegation of short payment of tax was made out.

(d) For a declaration that sale of sand being regulated and the sale price of sand being exclusively controlled by State Govt. by fixing the sale price at Rs. 500 @ 100 cft, which computation involve tax burden of 5% as sale tax/VAT & 10% as profit-margin for settlee, it would be inequitable and unjust for the respondent authorities to charge 18% when there is no provision for adjustment or reimbursement of GST in case of sand supplier.

(e) For a direction to the respondent to restrain from realizing the disputed amount through coercive process during the pendency of writ petition.

(f) For any other relief/reliefs to which the petitioner is entitled under law."

After the matter was heard for some time, learned counsel for the petitioner fairly stated that petitioner be permitted to prefer an appeal, as stipulated under the provisions of the BGST/CGST Act, 2017. He further states that the State has already recovered a sum of ₹23 lacs (Approximately) from the petitioner, with respect to both the orders and the demand notices issued, subject matter of the present petition as also analogous matter CWJC No. 4995 of 2021 titled as Md. Israil Vs. Union of India and Others.

Shri Vikash Kumar, learned Standing Counsel No. 11, who appears for the Revenue, states that if the petitioner were to prefer an appeal within next seven working days, the State shall not raise the issue of limitation, and limitation shall not come in the way of the Appellate Authority in deciding the appeal on merits. Also, if the statement made by the petitioner with regard to recovery of ₹23 lacs (Approximately) is correct, the issue of pre-deposit shall not be raised by the State and the said amount shall be treated to have been deposited against the condition of pre-deposit.

Statement accepted and taken on record.

Having heard learned counsel for the parties as also perused the record made available, we dispose of the present petition in the following mutually agreeable terms:-

(a) Petitioner shall prefer an appeal against the impugned order/notice dated 12//12/2020 passed by Assistant Commissioner of State Tax, Kishanganj, Purnea, Bihar in Reference No. ZD1012200113600 within next seven working days;

(b). If it is found that the petitioner has already deposited a sum of ₹23 lacs (Approximately), the issue of pre-deposit shall not be raised by the State and the said amount shall be treated to have been deposited against the condition of pre-deposit;

(c) This deposit shall be without prejudice to the respective rights and contention of the parties and subject to the order passed by the Appellate Authority. However, if it is ultimately found that the petitioner's deposit is in excess, the same shall be refunded within two months from the date of passing of the order;

(d) We also direct for de-freezing/de-attaching of the bank account(s) of the writ-petitioner, if attached in reference to the proceedings, subject matter of present petition. This shall be done immediately.

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

(f) Till the time petitioner prefers the appeal, no coercive action shall be taken against the petitioner;

(g) The Appellate Authority shall pass an order only after affording adequate opportunity to all concerned, including the writ petitioner;

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

(i) The Appellate Authority shall positively decide the appeal on merits, in accordance with law, expeditiously, preferably within a period of two months from the date of filing of the appeal;

(j) The Appellate Authority shall pass a speaking order, complying with the principles of natural justice, and assigning reasons, copy whereof shall be supplied to the parties;

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

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

(m) 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;

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

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

The instant petition sands disposed of in the aforesaid terms.

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

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

(Sanjay Karol, CJ)

(Rajan Gupta, J)

P.K.P./Amrendra

AFR/NAFR	
CAV DATE	
Uploading Date	22.10.2021
Transmission Date	