IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13819 of 2022

Mr. Sunil Kumar, Proprietor of M/s Gaurav Pharma, Hussaini Market Pulpar, Biharsharif, Nalanda, Bihar, 803101.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary Union of India through the Secretary, Ministry of Finance, Department of Revenue, North Block New Delhi- 110001.
2. State of Bihar through the Commissioner of State Tax, having its Office at Vikas Bhawan, Bailey Road, Patna.
3. Principal Chief Commissioner of CGST and Central Excise having its office at Central Revenue Building, (Annexe), Bir Chand Patel Marg, Patna.
4. Principal Commissioner Patna 1, CGST and Central Excise, having its office at Central Revenue Building, (Annexe), Bir Chand Patel Marg, Patna.
5. Asst. Commissioner of State Tax, SGST, Biharsharif, Bihar.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Aamir Hayat, Advocate
For the Respondent/s	:	Mr. Anshuman Singh, Sr. SC. CGST & CX
For the State	:	Mr. Vikash Kumar, SC-11

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 10-11-2022

Heard learned counsel for the parties.

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

1.1. To declare that the section 16(4) of the CGST and BGST Act. 2017 is to be interpreted and read as a directory provision and not mandatory provision.

In Alternate

1.2. To declare that section 16(4) of the CGST and BGST Act, 2017 to the extent it seeks to deny input tax credit if not taken within the due date of furnishing of the return for the month of September following the end of the financial year to which any invoice or debit note pertains or furnishing of annual return, whichever is earlier as arbitrary and illegal, beyond the scope of GST Act, 2017 and against the scope of GST Act, 2017.

1.3. To declare that section 16 (4) of the Central Goods and Services Tax Act, 2017 (hereinafter called the CGST Act) and section 16 (4) of the Bihar Goods and Services Tax Act, 2017 (hereinafter called the BGST Act) denying entitlement of input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of the financial year to which such invoice or debit note pertains to the relevant annual return in violative of Article 14, Article 19(1) (g), Article 265 and 300A of the Constitution of India.

1.4. To declare that the conditions as prescribed in section 16(4) of the CGST and BGST Act, 2017 Act are merely procedural in nature and cannot override the substantive conditions as mandated in section 16 (1) and section 16 (2) of the said Acts.

1.5. To declare that in view of the non obstante clause present in section 16 (2) of the CGST and BGST Act, 2017 the same would prevail over section 16 (4) of the said Acts.

1.6. To declare that on true interpretation of section 16(4) of the CGST and BGST Act, 2017 the embargo in the said provision would apply only to restrict claim of input tax credit in respect of invoices or debit notes received after the end of the financial year beyond September of the preceding financial year and not such claims in a belated return filed

1.7. In the alternative and without prejudice to the prayer made in (i) above read down section 16(4) of the CGST and BGST Act, 2017 in accordance with principles of harmonious constructions to remove the embargo of claim of input tax credit in the circumstances stated in section 16 (4) of the said Act

1.8. To quash show cause notice **Ref. No. ZD101220029859N** dated 19.02.2020 (as contained in Annexure-3) issued by the Respondent no. 5 under section 73 of the BGST Act proposing to disallow input tax credit for the tax period April - March, 2019, on the solitary ground of late filing of return in Form GSTR 3B be quashed.

1.9. Quash the notice of demand **Ref. No. ZA1003200189428** dated 17.03.2020 as contained in Annexure-4) issued by the Respondent no.5 for the tax period April - March, 2019.

1.10. Any other order as deemed appropriate by this Hon'ble Court in the Interest of Justice.

After the matter was heard for some time, learned counsel for the petitioner states that the petitioner shall prefer an appeal within a period of four weeks from today also fulfill the condition of pre-deposit.

None can have any objection to the same.

Liberty as prayed for is granted subject to the petitioner preferring the appeal within a period of four weeks.

Learned counsel for the State states that if any such appeal is preferred by the petitioner within the aforesaid period, the same shall be heard on merits, to be decided within a period of four weeks from the date of its filing.

Statement accepted and taken on record.

We only hope and expect the appropriate authority to consider and decide the appeal on its own merit and with reasonable dispatch.

We clarify that we have not expressed any opinion on facts and law. All issues are left open.

Learned counsel for the parties undertake not to take any unnecessary adjournment in such proceedings.

The appellate authority shall pass a speaking order, assigning reasons, copy whereof shall be supplied to the parties.

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

The present petition stands disposed of with the liberty aforesaid.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	14/11/2022
Transmission Date	