IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15024 of 2022

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M/s Broad-Son Commodities Private Limited Having its registered office at Dr. Himanshu Complex, Block Road, Koilwar Chowk, Arrah, Police Station- Arrah, District- Bhojpur, Bihar through its authorized Signatory and one of the Directors namely Sri Ashok Kumar (Male), aged about 67 years, Son of Late Ram Chandra Saw, resident of Pareo, Post Office- Pareo, Police Station- Pareo, District- Patna.

... ... Petitioner/s

Versus

1. The Union of India through the Chief Commissioner Customs, Central GST and Central Excise, Patna, 2nd Floor, C.R. Building (Annexe), Bir Chand Patel Path, Patna.
2. The Chief Commissioner, Customs, Central GST and Central Excise, Patna, 2nd Floor, C.R. Building (Annexe), Bir Chand Patel Path, Patna.
3. The Principal Commissioner, Customs, Central GST and Central Excise, Patna-1, Patna.
4. The Commissioner, Central GST and Central Excise, Patna-1, Commissionerate, Patna, 3rd Floor, C.R. Building (Annexe), Bir Chand Patel Path, Patna.
5. The Commissioner (Appeals), Customs, Central GST and Central Excise, Patna, 2nd Floor, C.R. Building (Annexe), Bir Chand Patel Path, Patna.
6. The Assistant Commissioner, Central GST and Central Excise, Patna, (West) Division, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar, Advocate
		Mr. Rajeev Shekhar, Advocate
For the Respondent/s	:	Dr. K.N. Singh, ASG
		Mr. Anshuman Singh, Sr. S.C. CGST & CX
		Mr. Devansh Shankar Singh, J.C. to ASG
		Mr. Ram Krishna, Advocate

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

Date : 16-11-2022

Heard learned counsel for the parties.

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

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i) To issue a Writ in nature of Certiorari for quashing the decision as contained in order dated 13.05.2022 whereby the case has been remanded to the Adjudicating Authority for denovo adjudication by setting aside the order in original as it is beyond the authority and the jurisdiction of the Commissioner (Appeals) to direct the Department to file stay petition in terms of any instruction/ circular of the Board against the Order of the jurisdictional Commissioner as only the designated Committee of the Chief Commissioners is authorized to take such decision and consequent upon quashing of the same, issuance of writ in the nature of Mandamus directing the Authorities to comply the earlier order dated 22.12.2020 whereby the proceeding based upon show cause notice has been dropped by the jurisdictional Commissioner.

ii) To issue a Writ in the nature of Mandamus commanding the respondents to strictly adhere to the Circular No.1053/02/2017-CX dated 10.03.2017 issued by Central Board of Excise and Customs, Department of Revenue, Ministry of Finance, Government of India wherein it is mentioned that If the Department contemplates appeal against the order of the Commissioner (A) or the order of CESTAT, which is in favour of the appellant, refund along with interest would still be payable as per the time limits prescribed in the

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law or in the order, unless such order is stayed by a competent Appellate Authority. It is important to note that in such cases of consequential refund, besides filing of appeal against the order, it is also necessary that a protective demand of the refunded amount be issued under Section 11A by not lower than Assistant/Deputy Commissioner of Central Excise as per new monetary limits for adjudication of cases by the Central Excise officers and transferred to the call-book and Issuance of Writ in the nature of Mandamus commanding the respondents to refund the amount in question in light of the said Circular .

iii) To any other relief or reliefs to which the petitioner is entitled in the facts and circumstances of the case.

It is not in dispute that at this point in time, the appeal preferred by the Revenue is pending consideration before the Customs, Excise And Service-Tax Appellate Tribunal, Kolkata. Refund of the amount due and payable to the petitioner is being withheld only on such ground.

Ordinarily, we would have directed release of the same. However, considering the attending facts and circumstances, we only deem it prudent, as is so stated by the petitioner, to request the Tribunal for expeditious hearing of such appeal.

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Ordered accordingly.

As such, we dispose of the present petition with a request to the Customs, Excise And Service-Tax Appellate Tribunal, Kolkata to positively decide the appeal preferred by the Revenue, expeditiously and not later than three months from the date of production of a copy of this order.

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

(Sanjay Karol, CJ)

(Partha Sarthy, J)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	18.11.2022
Transmission Date	

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