IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15247 of 2022

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M/S Taneja Drug Agency, Moolchand Road, Samastipur, through its Proprietor Rajesh Kumar Taneja, male, Aged about 51 years, Son of Saheb Ram Taneja, Resident of Ward No. 21, Moolchand Road Samastipur, Bihar.

... ... Petitioner/s

Versus

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

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Abhay Kumar Thakur, Advocate
For the Respondent/s	:	Dr. K. N. Singh, A.S.G.
		Dr. Anshuman Singh, Sr. SC, CGST & CX
For the State	:	Mr. Vivek Prasad, GP-7

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 16-11-2022 The petitioner has prayed for the following relief/s :-

i. for a declaration 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 the 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 is violative of Articles 14 and 300 A of the Constitution of India.

ii. for a declaration section 16 (4) of the CGST and BGST Act to the extent it seeks to deny input tax credit if not taken within the due date of furnishingof 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 is arbitrary and illegal.

iii. for a declaration that the conditions as prescribed in section 16 (4) of the CGST and BGST Act are merely procedural in nature and cannot override the substantive conditions as mandated in section16 (1) and section 16 (2) of the said Acts.

iv. for a declaration that that in view of the non obstante clause present in section 16 (2) of the CGST and BGST Act the same would prevail over section 16 (4) of the said Acts.

v. for a declaration on true interpretation ofsection 16 (4) of the CGST and BGST Act 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 thefinancial year beyond September of the preceding financial year and not such claims in a belated return filed after such date.

vi. for a declaration that GSTR — 3B cannot be said to be a return prescribed under section 39 (1) of the CGST Act, 2017 as it does not satisfy the parameters of a return contemplated under section 39 (1) of the said Act.

vii. for a declaration that Rule 61 (5) of the CGST Rules, 2017 as amended retrospectively prescribing Form GSTR — 3B as a return under section 39 (1) of the CGST Act is ultra vires section 39 (1) of the **CGST** Act itself.

viii. the show cause notices issued by the respondent no. 5 under section 73 of the BGST Act proposing to disallow input tax credit for the tax period September 2018 to January 2019 on the solitary ground of late filing of return in Form GSTR 3B be quashed.

ix. the order dated 10.03.2022 (as contained in Annexure — 2 &2A) passed by the Appellate Authority affirming the order dated 12.03.2020 passed respondent no. 5 disallowing input tax credit for the tax period 2018-19 (February 2019 to March 2019) on the solitary ground of late filing of return in Form GSTR 3B be quashed.

x. in the alternative and without prejudice to the prayer made in (i) above read down section 16 (4) of the CGST and BGST Act to remove the embargo of claim of input tax credit in the circumstances stated in section 16 (4) of the said Act.

xi. the notice of demand dated 11.03.2022 (as contained in Annexure — 2A) issued by the Appellate Authority for the tax period 2018-19 (February 2019 to March 2019) be quashed.

xii. The original assessment order dated 12.03.2020 passed by the Assessing Authority Respondent no. 5 and Demand notice (Annexure – 1 & 1A) be also quashed.

xiii. for granting any other relief (s) to which the petitioner is otherwise found entitled to.

After the matter was heard for some time, learned counsel for the petitioner, under instructions, seeks permission to withdraw the present petition reserving liberty to file a fresh petition, on the same and subsequent cause of action, if so required and desired.

Permission granted with liberty as prayed for.

As and when any such petition is filed, the same shall be listed on priority basis.

Instant petition stands disposed of as withdrawn in the aforesaid terms.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

Ashwini/Sujit

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