IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2940 of 2023

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Pinkesh Kumar Singh having its registered office at Dumrahar Bazar, Mairitar, Dumrahar, Guthani, Siwan- 841435 through its Proprietor namely Pinkesh Kumar Singh, Male, aged about 34 years, Son of Sheshnath Singh, Resident of Vill- Mohiuddinpur, P.S.- Siwan Mufassil, District- Siwan 841226

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary of Bihar Patna.
2. The Principal Secertary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
3. The Special Commissioner of State Taxes, Government of Bihar, Patna.
4. The Additional Commissioner of State Taxes, (Appeal) Siwan.
5. The Joint Commissioner of State Taxes, Siwan.
6. The Assistant Commissioner of State Taxes, Siwan.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mithilesh Kumar Upadhyay, Advocate Mr. Raju Prasad, Advocate
For the Respondent/s	:	Mr. Vivek Prasad, GP-7

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-05-2023

The petitioner is aggrieved by the dismissal of a appeal by the first Appellate Authority on the ground of non-production of the certified copy. The dismissal was also on account of the Rules 108(3) of the Central Goods and Services Tax Rules, 2017 providing for a certified copy to be filed within seven days from the date of institution of the appeal. The appellant failed to do that and hence the Appellate Authority rejected the appeal on that ground.

We have already held that it will be harsh on the assessee, if the Appellate Authority dismisses the appeal merely for reason of non-production of the certified copy though the rule provides for it. It is an accepted fact that now the orders are auto-populated and the Department uploads such orders on the portal. The necessity and requirement of the certified copy, hence pales into insignificance.

The learned Government Advocate also fairly puts forth an amendment dated 26.12.2022 brought in by the Union of India to the corresponding rules under the CGST Act, wherein sub-rule (3) of rule 108 has been substituted which specifically provides that if the decision or order appealed against is uploaded on the common portal, a self attested copy of the decision or order would suffice.

The learned Government Advocate also points out that the present appeal was rejected after the Rule was amended.

Finding that the amendment to the Rule is a clarificatory one, we are of the opinion that the appeal has to be considered on merits. The impugned order is set aside only on the technical reason as stated above and the appeal is directed to be restored to the files of the Appellate Authority who shall consider afresh the issues raised on merits after issuing notice and affording an opportunity of personal hearing to the petitioner.

With the aforesaid observations/directions, the writ petition stands allowed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

aditya/sunil

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	09.05.2023.
Transmission Date	