IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2430 of 2024

M/s Ravi Kumar Jaiswal (a Sole partner firm) having it registered office Rajbag Pupri, Sitamarhi through its Authorized Signatory Mr. Kishan Jaiswal, aged about 32 years (M), S/o Kameshwar Prasad Jaiswal.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue, having its Office at Room No. 46, North Block, P.O. and P.S. North Block, New Delhi - 110001.
2. The Chief Commissioner, CGST and CX, Office at - C.R. Building, 1st Floor, Bir Chand Patel Path, Patna, Bihar.
3. The State of Bihar through Commissioner, BGST, New Secretariat Patna.
4. Joint Commissioner of State Tax, Sitamarhi Circle, District - Sitamarhi, Bihar.
5. Assistant Commissioner of State Tax, Sitamarhi Circle, Sitamarhi.
6. Additional Commissioner of State Tax (Appeal), Tirhut Division, Muzaffarpur.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 2476 of 2024

M/s Ravi Kumar Jaiswal (a Sole Partner Firm) having it registered office Rajbag Pupri, Sitamarhi through its Authorized Signatory Mr. Kishan Jaiswa, aged about 32 years (M), S/o Kameshwar Prasad Jaiswal.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue, having its office at Room No. 46, North Block, P.O. and P.S. North Block, New Delhi-110001.
2. The Chief Commissioner, CGST and CX, Office at C.R. Building, 1st Floor, Bir Chand Patel Path, Patna, Bihar.
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4. Joint Commissioner of State Tax, Sitamarhi Circle, District-Sitamarhi, Bihar.
5. Assistant Commissioner of State Tax, Sitamarhi Circle, Sitamarhi.
6. Additional Commissioner of State Tax (Appeal), Tirhut Division, Muzaffarpur.

... ... Respondent/s

Appearance :
(In Civil Writ Jurisdiction Case No. 2430 of 2024)

For the Petitioner/s	:	Mr.Anurag Saurav, Advocate Mr. Abhinav Alok, Advocate Mr. Abhishek Kumar, Advocate Ms. Prity Kumari, Advocate Mr. Sharda Raje Singh, Advocate
For the Respondent/s	:	Dr. K.N.Singh, ASG Mr.Anshuman Singh, Sr. SC, CGST & CX Mr. Shivaditya Singh, Advocate
For the State	:	Mr. Vivek Prasad, GP-7

(In Civil Writ Jurisdiction Case No. 2476 of 2024)

For the Petitioner/s	:	Mr.Anurag Saurav, Advocate Mr. Abhinav Alok, Advocate Mr. Abhishek Kumar, Advocate Ms. Prity Kumari, Advocate Mr. Sharda Raje Singh, Advocate
For the Respondent/s	:	Dr. K.N.Singh, ASG Mr.Anshuman Singh, Sr. SC, CGST & CX Mr. Shivaditya Singh, Advocate
For the State	:	Mr. Vivek Prasad, GP-7

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

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 01-08-2024

The subject matter of the above writ petitions are the assessment years 2018-19 and 2019-2020. The dates of the orders passed are common and so is the issue agitated before us. Hence, we pass a common order.

2. The petitioner is aggrieved with the dismissal of the two appeals for the respective years, on the ground that the entire demand has been satisfied by the appellant assessee and hence there is no requirement for an appeal.

3. The learned Counsel for the petitioner submitted that in fact, it was a recovery made after the respondent

authorities took coercive steps.

4. The respondents have filed a supplementary affidavit dated 30.07.2024, in which it has been categorically stated that the demands were created on 13.03.2020 and since there was no appeal filed till 10.08.2022, the respondents had taken up coercive steps and recovered the entire demand.

5. We are of the opinion that even if the petitioner had voluntarily paid up the amounts, there would be no waiver of the right of appeal. In fact, the Appellate Authority should have taken up the matter, since the petitioner has paid up the demand and then challenged the order. In any event, as of now, in the present case, the petitioner had not paid up the money voluntarily and recovery was made after the respondents initiated coercive steps.

6. The impugned order in the appeal, which led to the demand was dated 13.03.2020. The Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020, ***In Re: Cognizance For Extension of Limitation***, had extended the limitation regarding proceedings to be initiated against the orders passed between 15.03.2020 to 28.02.2022 for three months and also provided that if the statute provides for a further period, that could also be availed. The present order was passed on

13.03.2020 and the limitation would expire during the period, when the Hon'ble Supreme Court suspended limitation. But the appeal filed on 10.08.2022 is beyond the period provided by the Hon'ble Supreme Court .

7. We also notice that by Circular No. 53 of 2023, the Central Board of Indirect Taxes & Customs had allowed appeals to be filed insofar as proceedings taken under Section 73 or 74 against orders passed prior to 31.03.2023; if 12.5% of the tax in dispute is paid up; the 2.5% being required to be paid up in the cash ledger and the appeals were to be filed before 31.01.2024.

8. In the present case, the appeal stood dismissed on 19.09.2023, after which Circular No. 53 of 2023 was issued. Considering the fact that the entire demand was satisfied, we would think that the Circular has to be applied in the case of the present appeal also and there would be no requirement for the petitioner to again file an appeal before 31.03.2024. We also notice that the appeal has been dismissed not on the question of delay nor on merits and the rejection was only on account of satisfaction of the demand, which cannot be sustained.

9. On the above reasoning, we set aside the appellate order dated 19.09.2023 and restore the appeal to the files of the First Appellate Authority. The appeal shall be considered on

merits. If at all, any modification is made, the assessee would be entitled to refund of the amounts recovered.

10. The writ petitions stand disposed of.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.08.2024
Transmission Date	NA