IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9506 of 2024

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Mehi Kalpana Casting Industry a proprietorship firm having its place of business at Badari, 108, Harchandi, Guaradth, Bhagalpur 813105 through its proprietor namely Ghanshyam Prasad Singh male aged about 58 years son of Dip Narayan Singh Resident of Hasanganj Road, Kutubganj, Mirjanhat, Bhagalpur, Bihar - 812005.

... ... Petitioner/s

Versus

1. The Union of India through the Commissioner Central Goods and Service Tax and CX, Central Revenue Building, Beerchand Patel Path, Patna.

2. The Commissioner Central Goods and Service Tax and CX Central Revenue Building, Beerchand Patel Path, Patna.

3. The Additional Commissioner (Appeals), Central Goods And Service Tax, Second Floor, Central Revenue Building Beerchand Patel Path, Patna.

4. The Deputy Commissioner, Central Goods and Service Tax and CX Division, Bhagalpur.

5. The Assistant Commissioner, Central Goods and Service Tax and Central Excise Division, Bhagalpur.

6. The Superintendent, Central Goods And Service Tax And CX Range, Bhagalpur, 4th floor, Kiran Vatika, Shitla Sthan, Tilkamanjhi, Bhagalpur-812001.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Gautam Kumar Kejriwal, Advocate
Mr. Atal Bihari Pandey, Advocate
Mr. Alok Kumar Jha, Advocate

		Mr. Mukund Kumar, Advocate
		Mr. Akash Kumar, Advocate
		Mr. Aditya Raman, Advocate
For the Respondent/s	:	Dr. Krishna Nandan Singh (ASG)
		Mr. Anshuman Singh Sr. SC, CGST&CX
		Mr. Shivaditya Dhari Sinha, Advocate
		Mr. Devansh Shankar Singh JC to ASG

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

Date : 15-07-2024

The petitioner is aggrieved with both Annexure-P/4 and Annexure-P/8 orders passed by the Appellate Authority and the Original Authority both of which relate to the very same demand.

2. The assessment year is 2018-19 and the Assessing Authority had passed an order on 25.12.2020 directing certain amounts to be refunded to the petitioner. The Commissioner under Section 107(2) of the Central Goods and Services Tax Act, 2017 ('CGST Act' in short) took up the matter *suo motu* and reviewed the original order. Based on this *suo motu* review order under Section 107(2) of the CGST Act, as provided in the said provision the assessee approached the Appellate Authority against its original order which appeal was allowed by Annexure-P/4 dated 13.07.2022.

3. A further appeal lies to the Tribunal to be constituted under Section 112 of the GST Act. As of now, no Tribunal has been constituted and as per the order dated 23.03.2023 passed in CWJC No. 15465 of 2022 (SAJ Foods Products Private Ltd., Vs. State of Bihar & Ors) this Court has been directing the recovery to be kept in abeyance if 20 per cent of the disputed balance amount of the tax demanded is paid as per Section 112 of the GST Act. However, the Assessing Authority had proceeded with the matter and passed Annexure-P/8 dated 04.04.2024. Now, the petitioner would have to file an appeal under Section 107(1) of the CGST Act against Annexure-P/8 order in which the very same issue, which is sought to be agitated before the Tribunal as against Annexure-P/4 order dated 13.07.2022, will have to be challenged.

4. The learned ASG submits that the appeal was filed by the department and not by the assessee. In the context of an appeal by the assessee, 10 per cent would be paid under Section 107 of the CGST Act and another 20 per cent under Section 112 of the CGST Act. Hence, if an appeal is filed from Annexure-P/8 order definitely 10 per cent would have to be paid as against the demand made thereat.

5. Mr. Gautam Kejriwal learned Counsel for the

petitioner on the other hand submits that since the subject matter is the very same; if the Tribunal were functioning the assessee would have been entitled to get a stay in the appeal in which event the recovery would also not have proceeded with and Annexure-P/8 order definitely would depend on the appeal filed against Annexure-P/4 order.

6. Considering the peculiar circumstances in this case, we are of the opinion that there has to be a stay of recovery on the petitioner depositing an amount of 20 per cent as demanded in Annexure-P/4 order i.e. 20 per cent of the disputed tax amount. Insofar as Annexure-P/8 order is concerned, there would be no requirement to pay the 10 per cent.

7. In the above circumstances, if 20 per cent of the disputed tax amounts are paid, the recovery would be stayed till a Tribunal is constituted and within the stipulated time, if an appeal is filed, the recovery would depend upon further orders passed by the Tribunal. As far as Annexure-P/8 is concerned the petitioner would be entitled to file an appeal from the same only to ensure that it is filed within the limitation period as provided under Section 107 of the CGST Act. The requirement of payment of 10 per cent would be deemed to be satisfied on the petitioner producing evidence of payment of 20 per cent for the

purpose of keeping the recovery in abeyance till a Tribunal is constituted under Section 112 of the GST Act.

8. The writ petition stands disposed of with the above directions.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

ranjan/-

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