IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9130 of 2024

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Mayur Traders a proprietory concern of Late Arun Kumar Gupta (now deceased) having its office at Babuganj, Old G.T. Road, Dehri-on-Sone, Rohtas 821307 through its successor in business and brother Binod Kumar Gupta (Male, aged about 57 years) son of Shri Shiv Shankar Prasad, resident of Babuganj, Old G.T. Road, Dehri-on-Sone, Rohtas 821307.

... ... Petitioner/s

Versus

1. Principal Commissioner of CGST and Central Excise having its office at Central Revenue Building, (Annexe), Bir Chand Patel Path, Patna-800001.
2. Asst. Commissioner of CGST and CX Division, Gaya.
3. Asst. Commissioner of Central Tax, Audit Circle, Audit Commissionerate, Gaya.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. D.V.Pathy, Advocate
For the Respondent/s : Dr. K.N. Singh, Additional Solicitor General

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-12-2024

On 24.06.2024, the following order was passed:-

The petitioner is a proprietorship concern. Annexure P-4 notice issued in the name of the proprietorship concern has been issued in the name of the proprietor who is Arun Kumar Gupta. Arun Kumar Gupta is said to have expired on 18.04.2021 as is evident from Annexure P-3. The petitioner firm herein, is represented by the brother of the deceased person, who is the successor in business, which fact has not been noticed in the assessment made.

2. We hence stay the recovery as per Annexure P-4 and direct the learned

Additional Solicitor General to get further instructions in the matter.

3. Post on 26.07.2024.

2. The learned Additional Solicitor General on instructions submits that Annexure-P/4 order was passed only because the death of the proprietor was never reported. Be that as it may, an order passed against a dead person is *non est* in law. Here, the proprietor of the firm, who was the assessee had expired even before the order was passed. Hence, necessarily the order has to be set aside.

3. The learned Counsel for the petitioner, however, submits that based on the decision in ***C.W.J.C. No. 18398 of 2023*** titled ***Kanak Automobiles Ltd Vs. Union of India & Others;*** there is also delay insofar as the issuance of the order beyond the time provided under Section 73 (4B) of the Finance Act, 1994. However, the learned ASG submits that there is sufficient reason, since an audit was going on.

4. We leave the question open for consideration in the assessment or if any challenge is made from the assessment order. It goes without saying that the person who has now succeeded to the dead person cannot have a contention that there is delay caused, after the date on which the original proprietor passed way, since there was no reporting of the death itself.

5. We set aside Annexure-4 order and remand the matter for fresh consideration before the Assessing Officer wherein, the question of limitation that was occasioned, even before the death of the proprietor, can be brought on record by way of an objection.

6. An objection shall be filed within a period of one month before the Assessing Officer.

7. With the above reservation, the writ petition stands disposed of.

(K. Vinod Chandran, CJ)

(Nani Tagia, J)

aditya/-

AFR/NAFR	
CAV DATE	
Uploading Date	05.12.2024.
Transmission Date	