IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12294 of 2024

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M/s Ganpati Motors Manufacturer of electric three wheeler having agreement with Lakshmi Auto Traders, Kolkata, Registered Address- Plot No. 106, Jandaha Road, Hajipur, Bihar 844102, though its proprietor Smt.Priti Shaw, aged about 37 years, D/o Vijay Shaw, 1A, GobraGorasthan, GobindaKhatick Road, Kolkata, West Bengal, 700046.

... ... Petitioner/s

Versus

1. The Chief Commissioner, Central GST and Central Excise, Ranchi Zone, Patna, Bihar.
2. The Additional Commissioner (Appeals), CGST and CX, Patna, Bihar.
3. The Assistant Commissioner, CGST and CX, Vaishali Division, DakBanglow Road, Hajipur 844101 Vaishali.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Deepak Kumar, Advocate
For the Respondent/s	:	Dr. K.N. Singh, ASG
		Mr. Anshuman Singh, Sr. SC CGST & CX
		Mr. Devansh Shankar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-08-2024

The petitioner is aggrieved with the appellate orders passed against the rejection of refund applications filed by the petitioner.

2. The learned Counsel for the petitioner submits that the original order has been passed without considering the specific allegation in the show-cause notice.

3. The learned Standing Counsel for the Department, however, submits that Annexure-P/2 series of show-cause notices are not with respect to the subject matter of the refund but deals with the address of the principal place of business not matching with the address mentioned in the rent agreement.

4. We also see that the original order passed in appeal for refund *inter alia* refers to the appellant's principal place of business having been found by the AIO to be not as per the rent agreement.

5. It is also pointed out by the learned Government Advocate that in Paragraph No. 12 of the impugned order, the specific allegation raised in the show-cause notice has been dealt with. We extract the same hereunder:-

> *"12. Now, there is no doubt that the appellant is engaged in trading only and was never engaged in adding value to the goods or manufacturing activity, which is sina qua non for claiming refund under inverted duty structure. It is established both from the examination of related documents*

and from physical verification of the business premises as well as non co-operation and support by the appellant at this forum in submitting the documents evidencing fulfillment of eligibility by them:-

Entire business model was just created/set up on paper to take refund of ITC fraudulently."

(Emphasis supplied by underlining)

6. In any event, we do not find any reason to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India to deal with the matter in which there is a statutory appeal provided to the Tribunal.

7. Admittedly, a Tribunal has not been constituted till date and a notification has also been issued by the Central Government permitting the filing of the appeal after the Tribunal is constituted. Since, the impugned orders are with respect to refund, there is no demand and hence there is no requirement to pay 20% of the tax demand as has been found in ***SAJ Food Products Pvt. Ltd. vs. The State of Bihar & Others*** in ***C.W.J.C. No. 15465 of 2022***.

8. We, hence, close the writ petition leaving the petitioner the remedy to file an appeal before the Tribunal, as and when it is constituted.

9. We make it clear that we have not made any

observation on the merits of the matter and whatever has been recorded is only the rival submissions.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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AFR/NAFR	
CAV DATE	N/A
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