IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16030 of 2024

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Amit Kumar a proprietary concern having its office having its office at Near Police Chowki, Sultanpur, Danapur Cantt, Patna, Bihar- 801503 through its Proprietor Amit Kumar (Male, aged about 33 years) Son of Ashok Kumar Gupta, resident of 483, Sultanpur Police Chowki, Danapur Cantt, Patna, Bihar- 801503.

... ... Petitioner/s

Versus

1. Union of India, through the Secretary, Finance, North Block, New Delhi- 110001.
2. State of Bihar, through Commissioner of State Tax, Bihar, Patna having its office at Kar Bhawan, Birchand Patel Marg, Patna-800001.
3. Dy. Commissioner of State Tax, Danapur 1, Patna, Bihar.

... ... 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
		Mr. Anshuman Singh, Sr. SC, CGST & CX
For the State	:	Mr. Vivek Prasad, GP-7

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

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

3 29-11-2024 The petitioner is concerned with the assessment order passed for the year 2018-19 produced at Annexure-P/3 series. Specific reference is made to the detailed order passed by the Assessing Officer on 06.04.2024 produced along with Annexure-P/3 series.

2. On a perusal of the assessment order, it is seen that the petitioner's claim for input tax has been found to be not as per his GSTR-3B returns; on a verification of the GSTR-2A returns of the supplier. Both the Central and State tax were deficient by Rs.2,75,124.10/-.

3. The petitioner's contention is that it occurred only by a reason of the GSTR-2A of the supplier having not reflected the entire tax payment by the petitioner, to the supplier, which the petitioner is entitled to claim as input tax credit.

4. The petitioner relies on Circular F No.CBIC-20001/2/2022-GST dated 27.12.2022 which has been produced as Annexure-P/4 to the writ petition. The petitioner's contention based on the Circular is that for the financial year 2017-18 and 2018-19 considering the fact that the GST Acts were in its initial stage, the Central Board of Indirect Taxes and Customs had made a provision for the delay in the supplier uploading his invoices in his portal.

5. The specific reference made is to Clause 3(a) which is extracted hereunder:

S.No.	Scenario	Clarification
a.	Where the supplier has failed to file FORM GSTR-1 for a tax period but has filed the return in FORM GSTR-3B for said tax period, due to which the supplies made in the said tax period do not get reflected in FORM GSTR-2A of the recipients.	In such cases, the difference in ITC claimed by the registered person in his return in FORM GSTR-3B and that available in FORM GSTR-2A may be handled by following the procedure provided in para 4 below.

6. In such cases, the Board has prescribed for proceeding under Para 4. Hence, necessarily the Assessing

Officer will have to follow the said procedure.

7. It is also pointed out that if at all the GSTR-2A; which in all probability would at this point of time reflect all the supplies and the tax paid by the petitioner on purchase from the supplier, the petitioner also has the option of taking credit from the integrated tax which reflects in GSTR-2A. This is far more than the demand now raised for Central and State tax. The claim is also raised based on Section 49(5) of the BGST Act; which the Assessing Officer will have to consider on the basis of the provision.

8. We make it clear that we have not made any observation with respect to the claim of the petitioner as per the Circular and as per Section 49(5). We only set aside the assessment order for the purpose of redoing the assessment in accordance with the provisions and the Circular, which has to be considered by the Assessing Officer in accordance with law.

9. The writ petition stands allowed setting aside Annexure-P/3 assessment order for the above purpose.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Saurabh/-

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