IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.44 of 2024
In
Civil Writ Jurisdiction Case No.13380 of 2021

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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 Central Board of Indirect Taxes and Customs, through its Chairman, Ministry of Finance, Department of Revenue, having its office at North Block, P.O. and P.S. North Block, New Delhi-110001.
3. The Additional Commissioner, CGST, Patna Central Division, Patna.
4. The Deputy Commissioner, Central GST and Central Excise, Patna Central Division.
5. The Superintendent, CGST, Kadam Kuan Range, Patna

... ... Petitioners

Versus

M/S Kison (A sole proprietorship firm) having its registered office at Rajendra Nagar, Kadam Kuan, Patna- 16 through its sole proprietor Mr. Amit Kumar. ... ... Opposite Party

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Appearance :

For the Petitioners	:	Dr. K.N. Singh, ASG Mr. Anshuman Singh, Sr.SC, CGST & CX Mr. Shivaditya Dhari Sinha, Advocate
For the Opposite Party	:	Ms. Archana Sinha, Senior Advocate Mr. Alok Kumar @ Alok Kr Shahi, Advocate Ms. Swarna Roy, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

6 11-12-2025 Heard Dr. K.N. Singh, learned ASG assisted by Mr. Anshuman Singh, learned Advocate for the petitioners and Ms. Archana Sinha, learned Senior Counsel assisted by Mr. Alok Kumar, learned Advocate for the sole opposite party.

2. This application has been preferred for reviewing the order dated 24.01.2022 passed in CWJC No. 13380 of 2021 by the then Hon’ble Division Bench of this Court.

3. Learned ASG submits that from the order dated 24.01.2022 itself it will appear that on the said date, the proceedings of the Court were being conducted by the Bench from the Residential Office through video conferencing. It was during the Covid-19 pandemic period.

4. It is submitted that after taking note of the prayers made by the writ petitioner in the said writ application, the Hon'ble Division Bench was pleased to issue certain directions. The directions were issued to appropriate authority to positively consider and decide the issue in accordance with law taking into consideration the circulars issued by the Central Board of Excise and Customs.

5. Learned ASG submits that during the video conferencing, perhaps due to some technical glitch, he was not able to properly communicate the Hon'ble Division Bench that the Adjudicating Authority had already passed the adjudication order on 31.12.2021. It is submitted that the fact of the matter was that the Adjudicating Authority had already passed a detail order of adjudication on 31.12.2021. The said order of the Adjudicating Authority was sought to be produced before the Hon'ble Division Bench with a supplementary counter affidavit sworn on 21.01.2022. It is his submission that the supplementary counter affidavit was, in fact, filed on 22.01.2022 itself which was taken on the portal of the High Court as filed on 24.01.2022. In this regard, he has produced a copy of E-mail dated 22.01.2022. Learned ASG contends that the fact that final adjudication order has been passed was stated by him in course of video conferencing but as it appears, the same could not be duly addressed and that part of his communication could not find place in the order under review.

6. Learned ASG has submitted that if the order under review is allowed to remain as it is, the Adjudicating Authority would be required to pass another order on the same issue even as the final order of adjudication dated 31.12.2021 has already been challenged by the writ petitioner by filing a fresh writ application vide Token No. 28587 of 2025. It is submitted that in the given facts and circumstances of the case, the order under review is required to be recalled and the writ application is to be treated as having become infructuous.

7. The submissions of learned ASG has been vehemently opposed by Mr. Alok Kumar, learned Advocate for the writ petitioner. It is his submission that learned ASG had not informed the Hon'ble Division Bench about the passing of the adjudication order. Learned counsel has further submitted that the supplementary counter affidavit filed on behalf of the respondents is though sworn on 21.01.2022 but copy thereof was not served upon him through E-mail.

8. Mr. Anshuman Singh, learned Senior SC assisting the learned ASG has, however, produced a copy of E-mail dated 22.01.2022 showing that the supplementary counter affidavit was duly served upon Ms. Archana Sinha, learned Senior Counsel who is present in Court.

9. Receipt of E-mail is being disputed by Ms. Archana Sinha, learned Senior Counsel.

10. Learned counsel has submitted that there is no fault on the part of the writ petitioner, therefore, the order under review is not required to be recalled and the respondents/competent authority must comply with the Mandamus issued by this Court vide the order under review.

11. Having heard learned counsel for the parties and on perusal of the records, this Court finds that there are some admitted facts. It is evident from the records that the Adjudicating Authority had passed the order of adjudication on 31.12.2021 and the same was mentioned in the supplementary counter affidavit which was sworn on 21.01.2022 before the Advocate Oath Commissioner of this High Court. The fact that the adjudication order had already been passed has not been disputed. What is disputed is that the adjudication order was not placed before the Hon'ble Division Bench and it was not enclosed with the supplementary counter affidavit.

12. We have found from the copy of E-mails placed on the record that supplementary counter affidavit on behalf of the respondents was filed online vide E-mail dated 22.01.2022. This Court has been informed that, in fact, the next day being a Sunday, the date of filing of the supplementary counter affidavit has been shown on the portal of the High Court as 24.01.2022. It has also been brought to the notice of this Court that, in fact, the real time of filing of the affidavit/records is not shown and it takes some time in showing the date of filing in case of any intervening holiday.

13. Be that as it may, we are of the opinion that the supplementary counter affidavit was already filed prior to 24.01.2022.

14. Mr. Anshuman Singh, learned Senior SC assisting the learned ASG has placed before us a copy of the E-mail showing that the supplementary counter affidavit was duly served upon Ms. Archana Sinha, learned Senior Counsel who is present in Court.

15. Learned Senior Counsel for the Opposite Party has, however, disputed receipt of the said E-mail.

16. We do not think it just and proper at this stage to go into an inquiry as to whether the copy of the supplementary counter affidavit was really received or not. Such an exercise would be only an exercise in futile. Once this Court is convinced that the supplementary counter affidavit sworn on 21.01.2022 was already filed online on 22.01.2022, nothing more is required to be looked into.

17. In the peculiar facts and circumstances of this case, we are of the considered opinion that on the face of the fact that the adjudication order had already been passed by the competent authority as back as on 31.12.2021, the same authority cannot be directed to pass a fresh order of adjudication once again. Even if the submissions of learned counsel for the writ petitioner is admitted for argument sake, there cannot be any iota of doubt that had the fact that the Adjudicating Authority had already passed an order been brought to the notice of the Hon'ble Division Bench hearing the writ application on 24.01.2022, the Hon'ble Division Bench would not have issued directions to the Adjudicating Authority to pass an order as has been done by the order under review. We reproduce the operative part of the order under review hereunder for a ready reference:-

> "Be that as it may, we dispose of the present writ petition in the following terms:
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> (a) We direct the appropriate authority to positively consider and decide the issue in accordance with law, and more so, accounting for circulars issued by the Central Board of Excise and Customs, including the one annexed along with the writ petition as Annexure-2 dated 10th of March, 2017;
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> (b) We are hopeful that the appropriate authority (Respondent No. 3) shall take an appropriate decision at the earliest and strictly in accordance with law;
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> (c) Needless to add, liberty reserved to the petitioner to place on record all relevant materials in support of his contention in response to the show-cause notice;
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> (d) The appropriate authority shall pass a reasoned and speaking order assigning reasons, after accounting for all the materials placed on

record by the parties;

(e) Liberty reserved to the petitioner to take recourse to such remedies as are otherwise available in accordance with law, including filing a fresh petition before this Court on the same and subsequent cause of action;

(f) During pendency of the case, no coercive steps shall be taken against the petitioner.

(g) The Appropriate Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(h) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(i) The authority concerned shall decide the case on merits expeditiously, preferably within a period of two months from the date of presentation of a copy of this order;

(j) The authority concerned shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

(k) We are hopeful that as and when petitioner takes recourse to such remedies, before the appropriate forum, the same shall be dealt with, in accordance with law, with a reasonable dispatch;

(l) We have not expressed any opinion on merits and all issues are left open;

(m) If possible, proceedings during the time of current Pandemic [Covid-19] be conducted through digital mode;

The instant petition stands disposed of in the aforesaid terms."

18. Taking note of the fact that the adjudication order had already been passed on 31.12.2021, we recall the order under review and declare that the writ petition became infructuous. The petitioner has already challenged the order of adjudication separately.

19. In the said view of the matter, the Civil Review Application stands disposed of.

20. Let CWJC No. 13380 of 2021 be listed under appropriate heading for passing an appropriate order in view of the recall of the earlier order dated 24.01.2022.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

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