IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4541 of 2024

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M/S Mangal Murti Constructions (A Partnership Firm), having its registered address at Sri Ram Kunj Apartment B- 21, East Boring Canal Road, P.S. Buddha Colony, Patna, Bihar 800001 through its Partner Mr. Amit Kumar Singh Male aged about 50 years S/o- Yogendra Prasad Singh R/o- Sri Ram Kunj Apartment B-21, East Boring Canal Road, P.S.. Buddha Colony, Patna, Bihar - 800001.

... ... Petitioner.

Versus

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. Principal Commissioner Central GST & Central Excise, Patna-I, Central Revenue Building, Patna- 800001.
3. Assistant Commissioner (Adjn) Central GST & Central Excise (H), Patna-I, Central Revenue Building, Patna- 800001.

... ... Respondents.

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Appearance :

For the Petitioner	:	Mr. Shashwat Pratyush, Advocate.
		Mr. Himanshu Shekhar Jha, Advocate.
For the Respondents	:	Mr. Anshuman Singh, Sr. SC, CGST and Cx.
		Mr. Prabhat Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 18-01-2025

In the instant writ petition, the petitioner has prayed for the following relief(s):

> “(i). For issuance of writ in nature of Certiorari for quashing of order dated 26.12.2023 passed by the Respondent No.2 in terms of the Section 73(1) of the Finance Act 1994 and Section 174 of the Central Goods and Service Tax 2017 (hereinafter referred to

as CGST Act 2017).

(ii). For issuance of Writ in nature of Certiorari for quashing of nonspeaking and vague Show Cause Notice issued by Respondent No.3 dated 22.04.2019 as it is against the principle of the Natural Justice.

(iii). For issuance a writ of Mandamus or any other appropriate writ, order or direction in the nature thereof, directing the Hon'ble Tribunal to admit and hear the appeal on merits, without insisting on payment of pre-deposit or alternatively grant some time to make pre-deposit amount.

(iv). For grant of any other relief or reliefs to which the Petitioner is found entitled in the facts and circumstances of the instant case."

2. The petitioner without exhausting statutory remedy of appeal before the Appellate Tribunal under Section 86 of the Finance Act,1994 against the impugned order dated 26.12.2023 passed by the 2nd Respondent has rushed to this Court. The present writ petition could have been entertained in the light of the principle laid down by the Hon'ble Supreme Court in the case of **Godrej Sara Lee Ltd. Versus Excise and Taxation Officer-cum-Assessing Authority and Others,** reported in **2023 SCC OnLine SC 95 (para-4)**, however, one of the issue is that whether petitioner is entitled to exemption from Service tax under the relevant provision or not. In this regard, despite repeated requests from the respondents, the petitioner has not furnished requisite documents. Such requisite documents were stated to have been placed on record in the present writ petition and those material informations are inadequate as contended by the Respondents in their counter affidavit. Having regard to the disputed issues relating to whether petitioner is exempted for Service tax under the relevant provision or not is required to be adjudicated by the Department or Appellate Tribunal and the same cannot be adjudicated under Article 226 of the Constitution in the writ petition in the light of Hon'ble Supreme Court decision in the case of **Shalini Shyam Shetty and another Versus Rajendra Shankar Patil, (2010) 8 Supreme Court Cases 329.** Moreover, perusal of counter affidavit on behalf of Respondents read with documents it is evident that petitioner has failed to co-operate in deciding the matter. In fact, he was permitted to appear for oral hearing and the same has not been availed. Since Respondents have demanded certain authenticated documents relating to subject matter and the same was not made available. That apart, if petitioner is disputing contents of counter affidavit, he should have filed rejoinder and it is not filed as on this day. Writ is not a proper remedy for seriously disputed question of facts that are matters of evidence.

3. Accordingly, the instant writ petition stands disposed of reserving liberty to the petitioner to invoke remedy of appeal before the Appellate Tribunal within a period of eight weeks from the date of receipt of this order. The Appellate Tribunal is hereby requested to condone the delay. In other words, time spent in the present litigation shall be taken note of for the purpose of condonation of delay in filing appeal. The Appellate Tribunal is hereby requested to decide the petitioner's appeal to be filed within a reasonable period of three months from the date of receipt of such appeal.

4. With the above observations, instant writ petition stands disposed of.

(P. B. Bajanthri, J)

(Sunil Dutta Mishra, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.01.2025.
Transmission Date	NA