IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10638 of 2024

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M/s Ishwar and Co. Contract Pvt. Ltd through its proprietor Bikesh Kumar, aged about 40 years, son of Shayam Deo Kumar, residence of Gokhle nagar, Bishanpur, ward no 5, Gokhle Nagar, Bishanpur, Tajpur, Begusarai.

... ... Petitioner.

Versus

1. The Union of India through Its Principal Chief Commissioner of Central Excise and Service tax, B.C. Patel Path, Patna.
2. Assistant Commissioner central GST and Central Excise division Begusarai.

... ... Respondents.

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Appearance :
For the Petitioner : Ms. Archana Sinha @ Archana Shahi, Senior Advocate.
For the Respondent-UOI : Dr. Krishna Nandan Singh, ASGI.
Mr. Anshuman Singh, Sr. SC, CGST & CX.
Mr. Mayank Mishra, JC to ASG.
Mr. Amarjeet, JC to ASG.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 18-03-2025

In the instant writ petition, the petitioner has prayed for the following reliefs:

> "(i) For setting aside the order dated 12.03.2024 passed by respondent number 2 by which he has raised the demand of service tax including cess amounting to ₹10,60,415/- not paid by the petitioner during the period financial year 2015-2016 and 2016-17 under proviso to section 73(2) of the Finance act read with Section 174 of CGST act 2017.
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> (ii) For setting aside the demand of interest at the applicable rate on the amount as

demanded under the provisions of section 75 of the Finance act 1994 read with section 174 of the CGST act.

(iii) For setting aside the penalty of ₹ 10,60,415/- under the provisions of section 78 of the Finance act 1994 read with section 174 of the CGST act for wilful suppression of material facts with interest to evade payment to service tax.

(iv) For setting aside the penalty of ₹ 5000/- under the provisions of section 77(1)(a) of the Finance act 1994 read with section 174 of CGST act for failure to take registration in accordance with the provisions of section 69 of the act.

(v) For setting aside the penalty of ₹ 5000 under section 77(2) of the Finance act 1994. Read with section 174 of the CGST act for violation of the provision of section 70 of the act read with rule 7 of the rules.

(vi) For setting aside the penalty of ₹5000 under Section 77(2) of the Finance act read with section 174 of the CGST for violation of the provision of section 67 and 68 of the act.

(vii) For setting aside the penalty of ₹10,000/- under Section 77(1)(c)(ii) of the act read with section 174 of the CGST act for failure to produce document as called for by the Department.

(viii) To issue an appropriate order/ direction in the nature of mandamus directing the respondent's authority not to take any course of action against the petitioner until the disposal of this writ petition.

(ix) To any other relief or reliefs for which the petitioner may be found entitled to in the facts and circumstances of the case during its hearing.

2. Learned counsel for the petitioner submitted that petitioner is not in receipt of show cause notices and personal hearing notices and further submitted that issuance of show cause notices itself is contrary to Circular dated 5th November, 2019, in particularly, paragraphs-2 and 4. The counsel for Union of India, however submitted that the petitioner has statutory remedy of appeal before the Appellate Authority. Without exhausting statutory remedy of appeal, petitioner has rushed to this Court.

3. We could have interfered with the impugned order if the petitioner's contention relating to non-service of notices, on the other hand, petitioner is represented by his representative as is evident from paragraph-8 relating to personal hearing in the impugned order. Petitioner is represented by Shri Balram Bharti, Chartered Accountant, an authorized representative of the petitioner. In the light of representative of the petitioner appeared before the Appellate Authority for personal hearing. The contention of the petitioner that notices have not been served to the petitioner in the manner known to the law, is not tenable. Insofar as consideration of Circular dated 5th November, 2019, in particularly, paragraphs-2 and 4, is required to be examined by the Appellate Authority. Therefore, instant writ petition is premature. Accordingly, instant writ petition stands disposed of in the light of the decision of the Hon'ble Supreme Court in the case of **State of Jammu and Kashmir Versus R.K. Zalpuri,** reported in **AIR 2016 Supreme Court 3006 (Para-20).** The overall principle laid down in the aforesaid decision is that if a person is having statutory remedy of appeal before the Appellate Authority in that event he has to exhaust such remedy. Writ Court can interfere only if there is any violation of principles of natural justice and violation of any statutory provision of law. Both the ingredients have not been made out by the petitioner in the present case. Therefore, we relegate the petitioner to the Appellate Authority insofar as filing of appeal before the Appellate Authority. In the event of filing of appeal before the Appellate Authority, Appellate Authority is requested to decide the petitioner's appeal within a reasonable period of time of six months from the date of receipt of such memorandum of appeal.

4. The Appellate Authority is hereby directed to take note of Section 14 of the Limitation Act for the purpose of condonation of delay to the extent that petitioner has spent time in this Court. Petitioner is also permitted to submit Interlocutory Application seeking interim relief, if any.

(P. B. Bajanthri, J)

(Alok Kumar Sinha, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.03.2025.
Transmission Date	NA