IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11975 of 2024

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Pawan Kumar Upmanyu Son of Late Braj Kishore Prasad Singh, Resident of Village- Dayanagar, P.O.- Ram Nagar, P.S.- Belsand, District- Sitamarhi (Bihar).

... ... Petitioner

Versus

1. The Union of India through the Secretary, Finance Department, Govt. of India, New Delhi.
2. The Chief Commissioner Income Tax, C.G.S.T and Central Excise, Bihar, Patna.
3. The Assistant Commissioner, C.G.S.T and Central Excise, Vaishali Division, Dak Bunglow Road, Hazipur.
4. The State of Bihar, through the Principal Secretary, Department of Education, Govt. of Bihar, Patna.
5. The District Program Officer (Est.), Department of Education, Sitamarhi.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate
		Mr. Bijay Kumar Pandey, Advocate
		Mr. Tejendra Sinha, Advocate
For the Respondent/s	:	Dr. K.N. Singh, Sr. Advocate
		Mr. Anshuman Singh, Sr. CGST & LX
		Mr. Shivaditya Dhari 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 : 14-02-2025

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

(i) For issuance of an appropriate writ/writs in the nature of Certiorari to quash and set aside the order dated 17.11.2023 passed under G.S.T. Act by the respondent no.3 i.e. the Assistant Commissioner C.G.S.T & Central Excise, Vaishali

Division, Hajipur in C.N. IV(06)428-AE/P.K. Upmanyu/west – SCN/Muz/2021-22 confirming the demand of service Tax Penalty of Rs. 6,33,879=00 under section- 78 of the C.G.S.T Act read with section 174 of Act, Further impose penalty of Rs. 10,000/- U/S-77(1)(C) on 1 penalty of rupees 10,000/- U/S77 1(a) read with section 174 of CGST Act and also impose Penalty of Rs. 10,000/- U/S 77(2) read with section 174 of the CGST Act.

The aforesaid penalty and service tax has been impose for the financial year 2016-17 at that time CGST Act not in existence and at the relevant time the Finance Act – 1994 was applicable and in the Finance Act service provided (received) by eligible educational Institution was exempted.

The petitioner has provided service under the Free and Essential Education Act, 2009 under the Notification issued by the Union of India. and as such the order for order of penalty under any Act, CGST Act as well as in Finance Act, 1994 is bad in law and as such fit to be set aside.

(ii) Further for a direction to stay the further proceeding of order dated 17.11.2023 till disposal of this writ application.

(iii) For any other relief/reliefs to which the petitioner may be found entitled to in the facts and circumstances of the case.”

2. Learned counsel for the Respondents raised a preliminary objection that petitioner has a statutory remedy of Appeal. However, learned counsel for the petitioner submitted that matter is squarely covered by the earlier decision of the co-ordinate Bench in the case of *M/S Kanak Automobiles Private Limited vs. Union of India & Ors*. and it was subject matter before the Hon’ble Supreme Court in Special Leave Petition (Civil) Diary No. 54313/2024 decided on 03.01.2025.

3. Having regard to the quantum of tax involved in the present case and M/S Kanak Automobiles Private Limited are concerned, in Kanak Automobiles it is Rs. 86 Lakh whereas in the present case it is Rs. 6,33,879/-, therefore, we intend to dispose of in the light of Kanak Automobile case read with Hon’ble Supreme Court decision dated 03.01.2025.

4. Accordingly, Writ petition stands allowed.

(P. B. Bajanthri, J)

(Sunil Dutta Mishra, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N.A
Uploading Date	18.02.2025
Transmission Date	N.A