IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19416 of 2024

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Ajit Kumar Jha Son of Jivkant Jha, Resident of Village- Bahadurpur, P.S.- Bahadurpur, District- Darbhanga. ... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, New Delhi.
2. The Chief Commissioner, Central GST Central Excise, Ranchi Zone, Patna.
3. The Commissioner (Appeals) Central GST and Central Excise, Patna II Patna.
4. The Deputy Commissioner, GST and CX Division Darbhanga.
5. The Assistant Commissioner, Central Goods and Service Tax, Division Darbhanga.
6. The Superintendent (Appeals) Customs, Control GST and Central Excise, Patna.
7. The State of Bihar through the Executive Engineer, Rural Work Department, Works Division, Muzaffarpur East-2.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Girish Chandra Jha, Adv
For the State	:	Mr. Vikash Kumar, Standing Counsel (11)
For the U.O.I.	:	Dr. Krishna Nandan Singh, Sr. Adv (ASGI) Mr. Anshuman Singh, Sr. SC, CGST & CX Mr. Shivaditya Dhari Sinha, Adv

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR SINHA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

5 09-04-2025 In the instant petition, petitioner has prayed for the following reliefs:-

> *(i) For issuance of appropriate writ/writs, order/orders, direction/directions for setting aside the notice dated 21.10.2021 proposing demand and recovery of Rs. 35,66,063/ of Service tax along with interest thereon and penalty under section 73(i), 75 and 78 of GST Act, 2017 and further for issuance of appropriate writ for setting aside the order*

dated 24.11.2023 bearing no 28/ST/AC/DBG/2023-24 passed by respondent no. 4 whereby and where under the respondent no. 4 confirmed the demand and recovery of Rs. 35,66,063 along with penalty of Rs. 30,000/- against the petitioner and ordered its recovery and further for issuance of appropriate writ for setting aside the order dated 28.06.2024 passed by respondent no. 3 passed in Appeal No. 63/Pat/S.Tax/Appeal/2024-25 whereby and where under the respondent no. 3 rejected the appeal filed by the petitioner against the order dated 24.11.2023 merely on the ground of non-payment of mandatory payment of pre-deposit of appeal fee without going into the merits of the case and/or issuance of appropriate writ/writs under the facts and circumstances of the case.

2. Adjudicatory Authority passed the order on 24.11.2023 and further order of imposing penalty for violation of registration and failure to file statutory returns under Section 77 (1) of Act and non-maintenance of records as per provisions of the Act under Section 77 (2) of the Act before the Appellate Authority. Appellate Authority has proceeded to dismiss the petitioner's memorandum of appeal on 28.06.2024 for not adhering to the various provisions for entertaining appeal under Section 35F of Central Excise Act, 1944. Hence, the present petition.

3. The petitioner has not complied sub-section (1) of

Section 35F of Central Excise Act, 1944, appeal is entertainable only if the appellant has deposited 7 ½ per cent of the duty demanded or penalty imposed or both, in pursuance of decision or an order passed by an officer of Central Excise lower in rank than the Commissioner of Central Excise. Resultantly, the petitioner's appeal has been disposed of as not maintainable. The order of the Appellate Authority dated 28.06.2024 stands set aside. The petitioner is hereby directed to comply Section 35F and other ancillary provisions so as to entertain his appeal before the Appellate Authority. If the same is complied by the petitioner within a period of three weeks from the date of receipt of this order, in that event, Appellate Authority is requested to entertain Appeal, if the petitioner's appeal is in order. We request the Appellate Authority to decide the petitioner's appeal within a reasonable period of six months from the date of compliance.

4. The writ petition stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Sinha, J)

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