(2021) 01 PAT CK 0123

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5495, 5920 Of 2020

Gammon Enginners And Contractors Pvt. Ltd. APPELLANT

Vs

State Of Bihar And Ors RESPONDENT

Date of Decision : 11-01-2021

Acts Referred:
Bihar Goods And Services Tax Act, 2017 — Section 39(7), 50, 50(1), 75(12)

Citation : (2021) 01 PAT CK 0123

Hon'ble Judges : Sanjay Karol, CJ;Partha Sarthy, J

Bench : Division Bench

Advocate : Gautam Kumar Kejriwal, Vikash Kumar

Final Decision : Disposed Of

Judgement

Let the name of learned counsel for the petitioner be read as â??Mr. Gautam Kumar Kejriwalâ? in place of â??Mr. Arvind Kumar Kejriwalâ?.

Accordingly, order dated 18.12.2020 stands modified to that extent only.

Petitioner has prayed for the following relief(s):-

â??a) For issuance of writ or order in the nature of certiorari for quashing of the order number ZA100220024174L dated 22.02.2020 passed by the

respondent number 2 (hereinafter referred to as the assessing authority short) under section 75 (12) read with section 50 (1) of the Bihar Goods And

Services Tax Act 2017 (hereinafter referred to as the act for short), act for short),Central Goods And Services Tax Act 2017, read with section- 20 of

the Integrated Goods And Services Tax Act 2017 and the consequential demand notice issued in form GST DRC â?" 07 dated 22.02.2020;

b) For holding and a declaration that the impugned order number ZAI00220024174L dated 22.02.2020 and the consequential demand notice is wholly without jurisdiction and is unsustainable in the eye of law;

c) For further holding and a declaration that in absence of the Jurisdictional fact necessary for exercise of power under section 50 read with section

75 (12) of the act the respondent assessing authority could not have passed the impugned order and the consequential demand notice which is

accordingly without jurisdiction and liable to be quashed by this Hon'ble court;

d) For further holding and a declaration that the case of the petitioner is squarely covered by the judgement dated 06.01.2020 of Hon'ble Madras High

Court in the matter of Refex Industries limited Vs Asst Commissioner of CGST and Central Excise wherein it has been held that the liability of

interest under section 50 of the act would be attracted only in case of the tax liability discharged from out of the cash ledger;

e) For further holding and a declaration that no liability of interest would be attracted in the case of the petitioner when the credit balance existing in

the electronic credit ledger of the petitioner is quite surplus to meet the tax liabilities admitted by the petitioner in the returns filed for the respective

months;

f) For further holding and a declaration that in case the petitioner has already furnished the return and made payment of tax liablities in terms of

section 39(7) of the act no liability of interest would be attracted in terms of section 75(12) of the act;

(g) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case.â??

In view of the stand taken by the State vide its affidavit dated 09.01.2021 affirmed by Mr. Gautam Kumar Kejriwal, learned counsel for the petitioner,

we close the present proceedings taking on record the averments made by the deponent, part of which are reproduced as under:

11. That post issuance of Notification-no-63/2020 dated 25th August 2020 by the central government a press release was issued by Ministry of

Finance, Govt of India on 26.08.2020 wherein it was clarified that amendment in section 50(1) has been made effective prospectively w.e.f. 01.09-

2020 due to certain technical limitations, however for present no recoveries for interest charged on gross liability will be recovered for the past period

as well by the central and state tax administration.

12. That in the light of aforesaid submissions, it is stated that no recovery will be

made for interest charged on delayed payment of tax which has been

made by the taxpayer debiting the credit ledger.

13. That however, in terms of amended section â?" 50 (1), it is prayed before the Honâ??ble court that the taxpayer may be directed to pay the

interest on delayed payment of tax which has been made by debiting the cash ledger that is on net liability.

Additionally, our attention is invited to the circular issued by the Central Board of Indirect Taxes & Customs (CBIC), which reads as under:-

â??Interest on delayed payment of GST:CBIC Posted on 26th August 2020 5:34 PM by PIB Delhi Central Board of Indirect Taxes & Customs

(CBIC) today clarified that the Notification No. 63/2020-Central Tax dated 25th August 2020 relating to interest on delayed payment of GST has been

issued prospectively due to certain technical limitations. However, it has assured that no recoveries shall be made for the past period as well by the

Central and State tax administration in accordance with the decision taken in the 39th Meeting of GST Council. This will ensure full relief to the

taxpayers as decided by the GST Council.

CBIC explanation came in response to an assortment of comments in the social media with respect to notification dated 25th August 2020 regarding

charging of interest on delayed payment of GST on net liability (the tax liability discharged in cash) w.e.f. 1st September 2020.â??

As such, the petition is disposed of in the aforesaid terms.

