IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9667 of 2021

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Ashok Kumar Gupta, Son of Gauri Shankar Prasad, Resident of - Ward No. 18 Gandhinagar, Bagha, West Champaran. ... ... Petitioner/s

Versus

1. The Union of India through the Principal Chief Commissioner of Central Tax, Government of India, New Delhi.
2. The Principal Commissioner of Central tax, Government of India, New Delhi.
3. The Commissioner Central Tax, Government of India, New Delhi.
4. The State of Bihar through the Principal Chief Commissioner, State Tax, Bihar, Patna.
5. The Chief Commissioner State Tax, Bihar, Patna.
6. The Commercial Taxes Officer, Bagha Circle, Bagha, District-West Champaran.
7. The Joint Commissioner, State Taxes, Bagha Circle, Bagha, District West Champaran.
8. The Assistant Commissioner of State Tax, Bagha Circle, Bagha.
9. The Joint Commissioner, State Taxes, Bagha Circle, Bagha.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Kundan Kumar, Advocate
		Mr. Ranjeet Kumar, Advocate
		Mr. Santosh Kumar, Advocate
For the Respondent/s	:	Mr. Dr.K.N.Singh (A.S.G.)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-11-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s).

> “1.That this Civil Writ application is being filed for issuance of appropriate writ/writs, direction/direction, order/orders and thereby for grant of following relief to the petitioner:-
> (i) For setting aside the order contained in Reference No. 627 dated 15.01.2020, passed by the Assistant Commissioner, State Tax, Bagha Circle, Bagha whereby tax, penalty and interest of Rs.

3732406/- was calculated for the financial year 2019-20 for the month of January to March 2019 and direction was issued to issue DRC 01 to the petitioner.
(ii) For setting aside the order contained in Reference No 628 dated 15.01.2020 passed by the Assistant Commissioner, State Tax, Bagha Circle, Bagha whereby tax, penalty and interest of Rs. 307896/- was calculated for the financial year 2019-20 for the month of June 2019 and direction was issued to issue DRC 01 to the petitioner.
(iii) The petitioner further prays for setting aside the ex-party final order dated 11.02.2020, passed by the Assistant Commissioner State Tax, Bagha Circle, Bagha under Section 74 of the Goods and Services Tax Act, 2017, whereby the tax, penalty and interest total Rs. 372406/-was imposed upon the petitioner for the month of January 2019 to March 2019 and a direction was issued so issue DRC 07.
(iv) The petitioner prays for setting aside the DRC 07 of Rs. Rs. 372406/- for the month of January 2019 to March 2019.
(v) The petitioner further prays for setting aside the Ex-Party final order dated 11.02.2020, passed by the Assistant Commissioner, Commercial Taxes, Bagha Circle, Bagha under Section 74 of the Goods and Services Tax Act, 2017, whereby the tax, penalty and interest total Rs. 643502/- was imposed upon the petitioner for the month of June 19 and a direction was issued to issue DRC 07.
(vi) The petitioner further prays for setting aside the DRC 07 for Rs. 643502/- for the month of June, 2019.
(vii) For any other relief for which the petitioner may be deemed entitled to."

After the matter was heard for sometime, learned counsel for the petitioner submits that the petitioner shall be content if a direction is issued to the Assessing Officer to consider and decide the petitioner's case in the light of the judgment dated 28.10.2021 rendered by this Court in C.W.J.C. No. 3374 of 2021 titled as Krishi Educational and Health Seva

Sansthan Kailash Enclave Versus The Union of India & Ors. for according to the petitioner this case is purely covered with the said decision.

The said order is reproduced hereunder:-

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

"i. For holding and declaring that the rate of taxes is Nil (exempted) upon a pure service (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union Territory or local authority or a Government authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution of India or in relation to any function entrusted to a Municipality under Article 243 W of the Constitution of India and therefore, the petitioner who rendered a pure services (Cleaning) to the Nagar Parishad, different Nagar Panchayat and submitted Bill without GST and received payment without GST, except the Bhabhuaa Panchayat which deducted 2% TDS(GST) and certificate issued in GSTR-7A.

(ii) For setting aside the show cause notice dated 05.02.2020 issued by the Assistant Commissioner of State Tax Patna West Circle, Patna, Bihar whereby the petitioner was directed to submit reply under Section 74 of the Goods and Services Tax Act, 2017 with regards payment of tax, interest and penalty of Rs. 29,02,099.02/- for the period of April 2019 to October 2019 which was issued **without even complying the mandatory provisions, i.e., Section 61 of the Goods and Services Tax Act, 2017 and Rule 99 of the Bihar Goods and Services Tax Rule, 2017 and that too without considering the same that the services rendered by the petitioner was completely Tax free.**

(iii) The petitioner further prays for setting aside the final order dated 05.03.2020, passed by the Assistant

Commissioner of State Tax, West Patna Circle, Patna whereby the petitioner has been made liable to pay taxes, interests and penalty of Rs. 14,51,049.59/- +14,51,049.59/- = 34,05,229.50/- in gross violation of principle of natural justice and as also in violation of Section 9, 61 and other provisions of Bihar Goods and Services Tax Act, 2017 and regulation issued thereunder, as the petitioner provided services to Panchayat which had Nil Tax.

iv) The petitioner further prays for setting aside the DRC-07 dated 05.03.2020, whereby a demand notice has been issued to the petitioner for total demand of Rs. 34,05,229.50/- which is also bad in law on account of violation of principle of natural justice, non compliance of Section-61 of the Goods and Services Tax Act, 2017 and other provision of Goods and Services Tax Act, 2017.

v) For setting aside the GST DRC-13 dated 11.03.2020 issued by the JCST, Patna West Circle, Patna whereby the he directed the Branch Manager, Bank of Baroda, Main Branch, Patna to immediately hold/attach Rs. 13,95,240 immediately in the account of the petitioner.

vi) For that the petitioner further prays that after setting aside the aforementioned orders, the respondents may be directed to refund the amount with interest which was submitted by Bhabhua Panchayat in its GSTR-7A which is Rs. 2,55,556.00.

vii) For any other relief for which the petitioner may be deemed entitled to."

"Undisputedly, minimum statutory period of 30 days mandated under the provisions of Section 74(A) of CGST/BGST Act, 2017 was not afforded to the petitioner for making payment due and prior to the expiry of 30 days, the assessing officer proceeded to pass the order, ex parte in nature. The notice dated 05.02.2020 (Annexure-7) directed the petitioner to file reply on 29th of February, 2020 which was within the period of 30 days. It is the mandate of law that 30 days' period has to be afforded to the parties, which was not done in the instant case.

As such, on this ground alone, we quash the notice dated 05.02.2020 (Annexure-7) as also the order of assessment dated 05.03.2020 (Annexure-8) with the

> direction to the assessing officer to issue a fresh notice in the light of the statutory provisions and pass an appropriate order in accordance with law. All proceedings be positively complied with in these matters.
>
> Petitioner undertakes to fully co-operate.
>
> Petition stands allowed.
>
> Interlocutory application, if any, shall also stand disposed of."

Respondents have no objection to the same.

As such, we quash the notice dated 25.01.2020 (Annexure-5) with the direction to the assessing officer to issue a fresh notice in the light of the statutory provisions and pass an appropriate order in accordance with law. All proceedings be positively complied with in these matters.

Petitioner undertakes to fully co-operate.

Petition stands allowed.

Interlocutory application, if any, shall also stand disposed of."

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

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