

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10774 of 2021

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Hill Life Care Limited Address-Amrit, Infront of OPD, India Gandhi Institute of Medical Science, Sheikhpura, Bailey Road, Patna-800014, through its Authorized Signatory Rakesh Kumar Singh aged about 47 Years, Male Son of Sidhi Singh, CIT Building, BRS-10, B-11, F-5, 17 Baghmata Lane Kankargachi Kolkata, West Bengal-700054,

... .. 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 Goods and Service Taxes, Bihar, Patna.
5. The Chief Commissioner, State Goods and Service Taxes, Bihar, Patna.
6. The Joint Commissioner, Patna City West Circle, Patna.
7. The Additional Commissioner, Patna West Division, Patna.
8. The Additional Commissioner, Patna East Division, Patna.
9. The Deputy Commissioner, State Goods and Service Taxes, Patna South Circle, Patna.
10. The Deputy Commissioner, State Goods and Service Taxes, Patna City, West Circle, Patna.
11. The Joint Commissioner, State Goods and Service Taxes, Patna South Circle, Patna.
12. The Branch Manager, Indus Ind Bank, Main Branch, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar, Advocate Mr. Santosh Kumar, Advocate
For the Respondent/s	:	Mr. Dr. K.N. Singh (ASG) Mr. Anshuman Singh, Sr. S.C. CGST Mr. Vikash Kumar, S.C. 11

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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).

- i. For setting aside the order dated 24.01.2019 passed by the Joint Commissioner, State Goods and Service Taxes, Patna South Circle, Patna whereby ITC claim of the petitioner under TRANS- 1 for Rs. 4,64,941.75/- has been rejected and decision has been taken to issue DRC 01 and show cause notice for Rs. 6,23,021.94/- under Section 73, 74 read with Rule 121 and 142 of the Bihar Goods and Services Tax Act, 2017 but most unfortunately the name of the agency and GSTIN has been incorrectly mentioned.
- ii. For setting aside the show cause notice dated 06.06.2019, issued under Section 73 of the Bihar Goods and Services Tax Act, 2017 for Its. 6,23,021.94/-, tax, interest and penalty and direction was issued to submit reply by 12.06.2019 within 6 days, which was issued on the basis of aforementioned order dated 24.01.2019 which is with respect to one M/s Exclusive store and of not of the petitioner.
- iii. The petitioner further prays for setting aside the final order dated 16.08.2019, passed by the Joint Commissioner, Goods and Service Taxes, Patna Sands Circle, Patna whereby the State Goods and Services Tax Transit Credit (TRAN-1) for Rs. 4,58,628.80/- was rejected and the petitioner was held liable to pay tax, interest and penalty i.e. total Rs. 6,23,021.94/- under Section 73 (9) of the Bihar Goods and Services Tax Act, 2017 and direction was also issued to issue DRC 07.
- iv. For setting aside DEC 07 dated 16.08.2019, issued with the signature of Joint Commissioner of State Goods and Set-vice Taxes, Patna South Circle, Patna, whereby the tax, interest and penalty of Es. 6,23,021.94/- was found recoverable from the petitioner.
- v. The petitioner further prays for setting aside the FORM GST DRC -13 issued by the Joint Commissioner of State Goods and Service Taxes, Patna South Circle, Patna, address to the Director, All India Institute of Medical Sciences whereby it was directed to withhold an amount of Rs. 6,23,022/- as against the aforementioned DRC 07.

vi. The petitioner further prays for setting aside the order contained in letter No 395 dated 22.02 2021 issued by the Joint Commissioner Goods and Services Taxes, Patna South Circle, Patna whereby the bank amount of the petitioner has been ordered to be attached for want of non-payment of amount of Rs. 623022/-.

vii. The petitioner further prays to the respondent authorities to allow the petitioner to operate its account maintained in Indus Ind Bank, Main Branch, Patna after withholding an amount of Rs. 623022, subject to final outcome of this case.

viii. For any other relief for which the petitioner may be deemed entitled to.”

We notice that the impugned order dated 24th of May 2019 was passed without proper application of mind, inasmuch as both the name of the parties in relation to whom the order was passed as also the GST number stands wrongly mentioned. It is not a typographical error for both the mistakes cannot be typographical in nature as they are hand written.

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 Bhabhuua 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 06.06.2019 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