

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2097 of 2021

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Bihar Risk Management Consultancy Private Limited having its registered office at 67, Thakur Bhawan, Chitragupt Nagar, Bankmens Colony, Kankarbagh, Patna- 800020 through one of its directors namely Ranjan Kumar male aged about 53 years, Son of Bindeshwar Thakur, Resident of 67, Thakur Bhawan, Manokamna Shiv Mandir, Sampatchak, Chitragupt Nagar, Bankmens Colony, Kankarbagh, Patna- 800020.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes, (Appeal), Central Division, Patna.
3. The Deputy Commissioner of State Taxes, Patna Special Circle, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Gautam Kumar Kejriwal, Advocate
For the Respondent/s	:	Mr.Lalit Kishore, AG
		Mr. Vikash Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-03-2021

Petitioner has prayed for the following relief(s):

“ a) For issuance of a writ in the nature of certiorari for quashing of an appellate order dated 20.08.2020 issued vide memo number 220 whereby the appeal preferred by the petitioner has been rejected;

b) For issuance of a writ in the nature of certiorari for quashing of the ex parte order of assessment dated 31.08.2019 issued vide reference



number 28 in form GST ASMT-13 by the respondent number 3;

c) For holding and a declaration that the appeal preferred by the petitioner on 23.06.2020 is well within limitation prescribed under section 107 of the Goods And Services Tax Act, 2017 (hereinafter referred to as "the act for short) from 05.03.2020 being the date of conscious knowledge of the impugned order dated 31 08.2019 and hence rejection of the appeal on grounds of delay is illegal, misconceived and unsustainable in the eye of law;

d) For further holding and a declaration that the limitation prescribed under section 107 of the act can be extended under section 5 of the limitation act 1963 and the provisions of the limitation act 1963 shall apply with full force in view of section 29 (2) of the said act;

e) For holding and a declaration that the return filed by the petitioner for the tax period Of June 2019 on 04.10.2019 with delay of three days with respect to the limitation off 30 days prescribed under section 62 (2) of the act is negligible and such delay ought to have been waived by the respondent number 3 and the actual figures returned by the petitioner deserved consideration and cognizance for the purpose of assessment of liability of the petitioner;

f) For further holding and a declaration that section 16 (2), 16 (4,39 read with section 46 and 47 of the act permits filing of a monthly return after due



date and imparts all characteristics of a return valid and acceptable in terms of law;

g) For further holding a declaration that order of assessment based on best judgement passed under section 62 (1) of the act is not penal in nature but merely regulatory to fill up the gaps of tax determination in a particular tax period Where the dealer defaults in filing the prescribed return and therefore not recoverable over and above the actual tax liability admitted and available as per the returns and records;

h) For further holding and a declaration that section 62 (2) of the act is directory and not mandatory and therefore any return validly filed in terms of section 39 read with section 47 of the act shall replace the best judgement assessment made under section 62 (1) irrespective of the bar of limitation prescribed under section 62 (2) of the act;

i) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case.”

Having heard learned counsel for the parties, as also perused the record, we are of the considered view that interest of justice would best be met if we dispose of the present petition in the following terms:

(a) The appellate authority could not have condoned the delay in hearing an appeal beyond the statutory period, which we



do hereby, in view of the current pandemic Covid-19 more so, in view of the direction issued by the Hon'ble Apex Court in *Suo Motu Writ (Civil) No. 3 of 2020 (RE: COGNIZANCE FOR EXTENSION OF LIMITATION)*. As such, the impugned order dated 20.8.2020 passed by the State Tax Additional Commissioner (Appeal), Patna, in Appeal Case No. AD100620000635W, titled as M/s. Bihar Risk Management Consultancy Pvt. Ltd., 2nd, 67, Thakur Bhawan, Bankmens Colony, Chitragupta Nagar, Kankerbagh, Patna, as contained in Annexure 6, is quashed.

(b) Also, the impugned order dated 31.8.2019 passed under section 62(1) of Goods and Services Tax Act, 2017, as contained in Annexure 4 needs to be quashed and set aside for the same to have been passed without following the principles of natural justice. In terms of the impugned order, financial liability stands fastened. Thus, it entails civil consequences, seriously prejudicing the petitioner inasmuch as, without affording any adequate opportunity of hearing or assigning any reason;

(c) Shri Gautam Kejriwal, learned counsel for the petitioner states that the petitioner has already deposited 45% of the amount. He further states that additionally, without prejudice to the respective rights and contentions of the parties, petitioner is



ready and willing to deposit a sum of Rs. 3 lacs with the appropriate authority on or before 9th March, 2021. Statement accepted and taken on record.

It stands clarified that deposit of such amount would be without prejudice to the respective rights and contentions of the parties and the order which the authority may pass upon the matter being remanded for consideration afresh.

As such, purely on a limited ground, we quash and set aside the impugned order dated 20.8.2020 passed by the State Tax Additional Commissioner (Appeal), Patna, as contained in Annexure 6 and order dated 31.8.2019 passed under section 62(1) of Goods and Services Tax Act, 2017, as contained in Annexure 4, with further mutually agreeable directions that- (a) the petitioner shall deposit a sum of Rs. 3 lacs with the authority on or before 9th March, 2021; (b) the petitioner shall appear before the assessing authority on 9th March, 2021 in his office at 10:30 A.M., on which date he shall place on record additional material, if so required and desired; (c) also, further opportunity shall be afforded to the parties to place additional material, if so required and desired; (d) petitioner undertakes to fully cooperate and not take any unnecessary adjournment; (e) the authority shall decide the matter on merits, in compliance of the principles of natural



justice, on or before 3rd of May, 2021; (f) liberty reserved to the parties to take recourse to such remedies as are otherwise available in accordance with law; (g) we have not expressed any opinion on merits and quashed the order only on the ground of violation of principles of natural justice. (h) if necessary, proceedings during the time of current Pandemic [Covid-19] would be conducted through digital mode; (i) needless to add, with the passing of the order, if it is eventually found that deposit made by the petitioner is in excess of the amount determined due and payable, the same shall positively be refunded expeditiously as per the provisions of the statute.

The instant petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

anil/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

