IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3374 of 2021

Krishi Educational and Health Seva Sansthan Kailash Enclave, House No. 1, near Sangeeta Apartment, Shivpuri, Puniachak, P.S.- Shashtri Nagar, Patna, Bihar- 800023 through its Secretary Vindhyachal Pathak aged about 46 years Gender Male Son of Balaji Pathak, Resident of House No. 1, Kailash Enclave, Shivpuri, Fulwari, P.S.- Shashtri Nagar, Patna, Bihar- 800023.

... ... Petitioner/s

Versus

1. The Union of India Through the Principal Chief Commissioner of Central Goods and Services Tax, Government of India, New Delhi.
2. The Principal Commissioner of Central Goods and Services Tax Government of India, New Delhi.
3. The Commissioner Central Goods and Services 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 Joint Commissioner State Tax, Patna west Circle, Patna.
7. The Deputy Commissioner State Tax, Patna west Circle, Patna.
8. The Assistant Commissioner of State Tax Patna West Circle Patna.

... ... Respondent/s

Appearance :

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

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE A. M. BADAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 28-10-2021

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 Governmental 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.

(Sanjay Karol, CJ)

(A. M. Badar, J)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	03.11.2021
Transmission Date	