IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3733 of 2022

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Gannon Dunkerley and Company Limited Shahjhanpur, Fathua, Patna, Bihar - 803201 through its manager Sri Anjani Kumar (male), aged about 40 years, son of Sri Arun Kumar Mishra, Resident of A- 22, Flat - 9, Gali - 1, West Vinod Nagar, Shakarpur, Baramad, East Delhi, P.S.- Laxmin Nagar, District - Delhi- 1100992.

... ... Petitioner/s

Versus

1. The Union of India, Department of Finance Govt. of India, New Delhi.
2. The Commissioner, CGST and Control Excise Department of Central Excise, C.R. Building, Patna, Bihar.
3. The Joint Commissioner, CGST (Appellate) C.R. Building, Bihar, Patna.
4. The Superintendent of CGST, Hazipur Range, Patna Division, C.R. Building, Patna, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Ms.Archana Meenakshee, Advocate
For the Respondent/s	:	Mr.Dr. K.N. Singh, Sr. Adv, (ASG)
		Mr. Anshuman Singh, Advocate Sr. SC, CGST & CX

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 23-03-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s).

> "(a) For issuance of a writ in the nature of certiorari quashing order in appeal no. 120/ Pat/ CGST/ Appeal/ 2011-22 dated 7.10.2021 of Joint Commissioner- Appeal and Order in original No. ZA 10081903511V dated 8.8.2019 of Superintendent of CGST, Hazipur Range, Patna East Division.
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> (b) For holding and declaring that the appeal

preferred by the petitioner on 6.8.2001 is well within the limitation prescribed under section 107 r/w Rule 108 of the GST Act, 2017, not preferring appeal within 3 months of the order would not make it time barred in the light of observation of Hon'ble Supreme Court vide order dated 27.04.21 observing in Misc. Application 665 of 2021 in SMW(c) No. 3/2020, (Suo Moto Writ (civil) (Re: Cognisance for Extension of Limitation).

(c) For holding and declaring that the limitation period prescribed under section 107 of CGST Act can be extended udner section 5 of the Limitation Act 1963 and provisions of limitation Act 1963 shall apply with full force in view of section 29 of the CGST Act 2017.

(d) For holding and declaring that when the return filed by the petitioner for the tax period of June, July, August 2019-20 on 21.7.2021 with late fees was accepted, such delay ought to have been waived due to the prevaling COVID-10.

(e) For holding the declaring that section 29(2) of the CGST Act 2017 stipulates that proper officer shall not cancel the registration of a person without giving the person an opportunity of being heard whereas herein the date of issuance of SCN is 29.4.2019 and date of personal hearing is 7.2.2019 which had already lapsed before issuance of SCN on 29.04.2019.

(f) For holding and declaring that Rule 22(4) of the CGST Rules stipulates that wherein reply furnished under sub rule (2) or in response to notice issued under sub-rule 2(A) of Rule 21A is found to be satisfactory, the proper officer shall drop the proceedings and order in Form GST Reg.20.

(g) For holding and declaring that the petitioner has furnished al returns and also complied with all the procedures as laid under rule 22(4) and made itself eligible for revocation of cancelled registration."

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 o 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 07.10.2021, in Appeal Case No. 120/ Pat/ CGST/ Appeal/ 2021-22, as contained in Annexure.1, is quashed.

(b) Also, the impugned order dated 8.8.2019 passed under section 62(1) of Goods and Services Tax Act, 2017, as contained in Annexure 1/A needs to be quashed and set aside for the same said 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 inasmush as, without affording any adequate opportunity of hearing or assigning any reason;

(c) Ms. Archana Meenakshee**,** learned counsel for the petitioner states that the petitioner has already deposited 45% of the amount. She 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 4th April, 2022. 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 07.10.2021, in Appeal Case No. 120/ Pat/ CGST/ Appeal/ 2021-22, as contained in Annexure.1, is quashed and impugned order dated 8.8.2019 passed under section 62(1) of Goods and Services Tax Act, 2017, as contained in Annexure 1/A with further mutually agreeable directions that- (a) the petitioner shall deposit a sum of Rs. 3 lacs with the authority on or before 4th April, 2022; (b) the petitioner shall appear before the assessing authority on 4th April, 2022 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 6th of June, 2022; (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)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	