IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4244 of 2022

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Sudhir Kumar Jha @ Sudheer Kumar Jha Son of Babu Narayan Jha, Resident of Village- Benipur, Anchal- Benipur, P.S.- Behera, District- Darbhanga.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Chief Commissioner, State Tax, Bihar, Patna.
2. The Principal Chief Commissioner, State Tax, Bihar, Patna.
3. The Chief Commissioner, State Tax, Bihar, Patna.
4. The Additional Commissioner, State Taxes, Patna West Division, Patna.
5. The Joint Commissioner, State Tax, Patna South Circle, Patna.
6. The Deputy Commissioner, State Taxes, Patna South, Bihar, Patna.
7. The Assistant Commissioner, State Tax, Patna Central Circle, Patna.
8. The Branch Manager, State Bank of India, Benipur Branch, Darbhanga.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ranjeet Kumar, Advocate
		Mr. Santosh Kumar, Advocate
		Mr. Yogesh Kumar, Advocate
		Mr. Ayush Kumar, Advocate
		Mr. Kanisk Kaustubh, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (SC 11)

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

Date : 05-04-2022

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

> "i. For setting aside the Show cause notice dated 11.12.2020 issued by Deputy Commissioner of State Tax, Patna South Circle, Patna whereby

only 12 days time i.e. up till 23.12.2020 was granted to submit reply in gross violation of Section 74(8) of the Bihar Goods and Services Tax Act, 2017, as 30 days time for show cause is mandatory requirement of law and same has also been observed by this Hon'ble Court vide judgment dated 28.10.2021, passed in CWJC No.3374/2021 while interpreting Section 73 of the BGST Act, 2017.

ii. For setting aside consequential Final order dated 23.01.2021 passed by Deputy Commissioner State Taxes, Patna Central Circle, Patna for the months of OCT' 2019 to MARCH' 2020 whereby tax, interest and penalty u/s 74(9) of the Bihar Goods and Services Tax Act, 2017, has been imposed in gross violation of principle of natural justice as also in violation of Section 74(8) of the Bihar Goods and Services Tax Act, 2017 as notice u/s 84(1) was issued on 11.12.2020 giving time only up till 23.12.2020 for submission of reply, whereas 30 days notice is a mandatory requirement of law, as has been observed by this Hon'ble Court vide Judgment dated 28.10.2021, passed in CWJC No.3374/2021

iii. For setting aside consequential Demand of Rs. 317968 in DRC 07 Dated 23.01.2021 which has been passed on the basis of aforementioned order u/s 74(9) of the Bihar Goods and Services Tax Act, 2017.

iv. 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 11.12.2020 (Annexure-1) directed the petitioner to file reply on 23.12.2020 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 11.12.2020 (Annexure-1) as also the order of assessment dated 23.01.2021 (Annexure-2) 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)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	11.04.2022
Transmission Date	