IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4996 of 2022

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Deepak Kumar, Son of Late Ramjee Prasad Sharma, Resident of Ward No. 3 Shankar Saraiya, Fatehtola, Turkauliya, District-East Champaran.

... ... 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 Joint Commissioner, State Tax, Motihari Circle, Motihari.
5. The Assistant Commissioner, State Tax, Motihari Circle, Motihari.
6. The Deputy Commissioner, State Tax, Motihari Circle, Motihari.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjeet Kumar, Advocate Mr. Kanishk Kaustubh, Advocate Mr. Ayush Kumar, Advocate Mr. Yogesh Kumar, Advocate Mr. Santosh Kumar, Advocate
For the Respondent/s	:	Mr. Vivek Prasad, GP-7

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

Date : 25-04-2022

Heard learned counsel for the parties.

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

i. For setting aside the order dated 11.12.2020, passed by the Assistant Commissioner of State Tax, Motihari Circle, Motihari under Section 74 of the Bihar Goods and Services Tax Act, 2017 whereby tax, interest and penalty of Rs. 19,96,982/- has been imposed for the tax period

October, 2019 to March 2020 on the basis of a show cause notice dated 11.12.2020, whereby only 17 days notice was given in gross violation of Section 74 (8) of the Bihar Goods and Services Tax Act, 2017 as well as in teeth of principle of natural justice.

ii. For setting aside the consequential DRC 07 dated 09.01.2021 for Rs. 19,96,982/- issued by the Assistant Commissioner of State Tax, Motihari Circle, Motihari.

iii. For setting aside the order of attachment as contained in Form GST DRC 13 issued vide memo no. 977 dated 23.03.2022, whereby the account of the petitioner has been attached irrespective of the fact that the petitioner subsequently regularized its return and paid the entire tax, interest and penalty as per the return.

iv. For that after setting aside the aforementioned order the respondent authorities be directed to reconsider the matter as the petitioner has already filled up all its return for the period of October, 2019 to March, 2020 in terms of Section 39 of the Bihar Goods and Services Tax Act, 2017 and has already paid tax, interest and penalty of Rs. 8081622/- as per its return and turn over.

v. 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 28.12.2020 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 dated 08.01.2021 in GSTIN- 10AMYPK4756H1ZQ as also summary of the order in Form GST DRC-07 dated 09.01.2021 in Reference No. ZD100121007600L (Annexure-4) 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)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	28.04.2022
Transmission Date	