IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7027 of 2022

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Nabi Ishrat Security Agency, A-46 Alinagar, Anisabd, P.S.-Gardanibagh, District-Patna-800002, represented through its Proprietor Ishrat Nabi, aged about 58 Years, Male Son of Sarfu Nabi, Resident of House No. A/46, Alinagar, Anisabad, P.S.-Anisabad, Patna- 800002.

... ... Petitioner/s

Versus

1. The Union of India through the Principal Chief Commissioner of Central Tax, Government of India, New Delhi.
2. The Principal Commissioner of Central Tax, Government of India, New Delhi.
3. The Commissioner Central 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 of State Taxes, Danapur Circle, Danapur.
7. The Deputy Commissioner of State Taxes, Danapur Circle, Danapur.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ranjeet Kumar, Advocate
For the Respondent/s : Dr. K.N. Singh, ASG
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 : 20-06-2022

Petitioner has prayed for the following relief(s):

"i. For setting aside the order dated 10.02.2021, passed by the respondent authorities whereby the refund of the petitioner for the February 2019 and March 2019 has been rejected in gross violation of principle of natural justice as also in violation of Rule 92(3) of the Central Goods and Services Tax Rule 2017, which prescribes minimum 15 days show cause for rejection of the refund but here the show cause was issued on 05.02.2021 and the refund was rejected vide order dated 10.02.2021.

ii. The petitioner further prays that after setting aside aforementioned two orders dated 10.02.2021 with respect to Feb 2019 and March 2019, the respondent authorities be directed to grant an opportunity of hearing to the petitioner and pass a reasonable and speaking order in accordance with law.

iii. For any other relief for which the petitioner may be deemed entitled to."

Undisputedly, minimum statutory period of 15 days mandated under the provisions of Rule 92(3) of CGST Rules, 2017 was not afforded to the petitioner for making payment due and prior to the expiry of 15 days, the assessing officer proceeded to pass the order, ex parte in nature. The show cause notices dated 05.02.2021 (Annexure-4 & 5) directed the petitioner to file reply on 09.02.2021 which was within the period of 15 days. It is the mandate of law that 15 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 show cause notices dated 05.02.2021 (Annexure-4 & 5) as also the orders of assessment dated 10.02.2021 (Annexure-6 & 7) 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/DKS

AFR/NAFR	
CAV DATE	
Uploading Date	25.06.2022
Transmission Date	