

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21017 of 2021

=====

M/s. Gujrat State Fertilizers and Chemicals Limited House No. 127, Near Singh Petrol Pump, Rukanpura, Bailey Road, P.S.- Rupaspur, District- Patna through its authorized signatory Ajit Kumar Dubey, Residing at Gram-Ramayan- Post Ramayan, Ramain, Etawah, P.S.- Bharatna, District- Uttar Pradesh, 206242.

... .. Petitioner/s

Versus

1. The Union of India, Through the Secretary Department of Revenue, Ministry of Finance, North Block, New Delhi- 110001.
2. The Secretary Department of Revenue, Ministry of Finance, North Block, New Delhi- 110001.
3. The State of Bihar through the Commissioner cum Secretary Commercial Tax Department, Govt. of Bihar, Patna.
4. The Commissioner cum Secretary Commercial Tax Department, Govt. of Bihar, Patna.
5. The Additional Commissioner State Tax (Appeals) Central Division, Patna.
6. The Joint Commissioner of State Tax Patliputra Circle, Patna.
7. The Assistant Commissioner of State Tax Patliputra Circle, Patna, Bihar.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Brisketu Sharan Pandey, Advocate
For the Respondent/s	:	Mr.Dr. Krishna Nandan Singh (ASG)
		Mr. Vivek Prasad, GP 7

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/Hon'ble Judges through Video Conferencing from their residential offices/residences. Also the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 04-01-2022

Petitioner has prayed for the following relief(s):

“(i) For issuing a writ of certiorari or any other appropriate



writ quashing/setting aside the Appellate order dated 03.08.2021 bearing Memo No. 459 and APL-04 No. ZD1008210004090 dated 04.08.2021 passed in Appeal Case No. AD100321000440D by Respondent No. 5 for the F.Y. 2018-19 (01.04.2018 to 31.03.2019) (Annexure-P/10 Series) whereby and whereunder the appellate authority i.e. Respondent No.5 has affirmed the order dated 23.02.2021 passed by the Respondent No.7 and thereby has rejected the appeal preferred by the petitioner;

(ii) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the assessment order dated 23.02.2021 (Annexure- P/15) passed by Respondent No. 7 for the F.Y. 2018-19 whereby and whereunder the ex- parte assessment order has been passed for the aforesaid period and thereby a total liability of Rs.31,56,946/- (with breakup as - (a) IGST worth Rs.16,35,992/- with interest of Rs.3,82,822/- thereupon; (b) CGST worth Rs.4,61,156/- with interest Rs.1,07,910/- thereupon; and (c) SGST worth Rs.4,61,156/- with interest Rs.1,07,910/- thereupon), has been imposed on the petitioner;

(iii) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the demand issued in form DRC 07- order dated 23.02.2021 (order No. ZD1002210129048) (Annexure- P/6) passed by Respondent No. 7 for the F.Y. 2018-19 whereby and whereunder the ex-parte demand order DRC 07 have been issued under Rule 100(1), 100(2), 100(3) & 142(5) of the CGST/BGST Rules, 2017 for the aforesaid month and thereafter an ex



parte demand has been raised for the aforesaid period and a total liability of Rs.31,56,946/- (with breakup as (a) IGST worth Rs. 16,35,992/- with interest of Rs.3,82,822/- thereupon; (b) CGST worth Rs.4,61,156/- with interest Rs.1,07,910/- thereupon; and (c) SGST worth Rs.4,61,156/ with interest Rs.1,07,910- thereupon), has been imposed on the petitioner;

(iv) For issuing a writ of mandamus or any other appropriate writ directing the Respondents not take any coercive action including recovery from bank account and third parties until pendency of the present writ application;

(v) For issuing writ of mandamus and thereby directing the Respondents to refund a sum of Rs.2,55,832/- Rs.46,116/- (CGST): Rs. 46,116/- (SGST) and Rs.1,63,600/- (IGST)} for F.Y. - 2018-19, which was deposited by the petitioner as ten percent of disputed tax amount as needed to be paid as pre-deposit (Section 107(6)(b) of Central Goods and Service Tax Act, 2017) before filing an appeal under CGST/SGST for the aforesaid period i.e. F.Y.-2018-19;

(vi) For issuance of appropriate direction including the mandamus directing the respondents to pass fresh assessment order for the F.Y. 2018-19 upon considering the invoices available with the petitioner as also the as on date mapping of GSTR-3B and GSTR-2A to ascertain the actual tax liability, if any on the petitioner for the period April 2018 to March 2019;

(vii) For holding that the impugned assessment order dated 23.02.2021 (Annexure P/5) and the appellate order dated



03.08.2021 (Annexure P/10) have been issued in most illegal manner by Respondent No.7 and 5 respectively without examining the records and the supporting materials uploaded by the petitioner on its web-portal of GST;

(viii) For passing any such other order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

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 good the 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 14.02.2021 (Annexure-4 series) directed the petitioner to file reply by 20th of February, 2021 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 14.02.2021 as also the order of assessment dated 23.02.2021 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 and not



take any unnecessary adjournment.

Petition stands disposed of in the aforesaid terms.

Interlocutory application, if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	10.01.2022
Transmission Date	

