IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23179 of 2019

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M/s Gaya Marketing proprietorship concern having it's place of business at Ramna Road, P.S.- Kotwali Gaya through it's proprietor Sethi Pharma Pvt. Ltd. a registered company having it's registered office at Tekari Road, P.S.- Kotwali, Gaya- 823001 represented by Shri Prakash Chand Jain male aged about 75 years son of Ladu Lal Jain resident of 78 Gopi Bhawan, Makhan Toli, Bazaza Road, P.s.- Kotwali, Gaya- 823001.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Joint Commissioner of State Taxes, Gaya Circle, Gaya.
3. The Assistant Commissioner of State Taxes, Gaya Circle, Gaya.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate
For the Respondent/s	:	Mr.Vikash Kumar (S.C.11)

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

Date : 28-06-2022

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 for quashing ot the order dated 26.09.2018 passed by the respondent number 3 being illegal and without jurisdiction in terms of Section 39, 46, 47 and 50 of the Bihar Goods And Service Tax Act, 2017 (hereinafter referred to as the Act for short);

b) For issuance of a writ in the nature of certiorari for quashing of the notice of demand in form DRC – 07 dated 05.10.2018 under the act issued by the respondent number 3 in consequence of the impugned order of interest;

c) For holding and a declaration that the impugned order and the consequential notice of demand issued upon the petitioner suffers from violation of the principles of natural justice and also violative of the statutory provision of section 46 of the act whereby and in light of which the respondent number 3 was obliged to issue a notice upon the petitioner in form GSTR – 3A seeking filing of the returns within a period of 15 days and it is upon failure of the petitioner in terms of such notice that any action could have been taken under the provisions of the act if so applied;

d) For further holding and a declaration that no liability of interest under section 50 of the act could be attracted in the case of the petitioner when there is no tax liability at all is due (neither admitted tax nor any demand of tax is due) for the period in question that is the month of September 2017 till the month of June 2018 and as such the entire action of respondent number 3 suffered from jurisdictional error;

e) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case.

The impugned order, in toto is re-propduced hereunder:-

ANNEXURE - 8 (61)

क्रमांक / तिथि	संक्षिप्त आदेश	आदेश का
26-09-18	व्यवसायी द्वारा माह मई-2018 की विवरणी विलंब से 17-09-18 को दाखिल किया गया है परंतु उनके द्वारा ब्याज का भुगतान नहीं किया गया है। अतः BGST Act-2017 की धारा-50 के अंतर्गत ब्याज अधिरोपित की जाती है।	

जिसकी संगणना निम्नवत् है

Month	Due date	date of filling Return	Delay in Days	Tax Amount (₹)
May 18	20.6.18	17.09.18	87	SGST-669972.88 CGST-669972.88

~~ब्याज की राशि = SGST — 669972.88~~
~~CGST — 669972.88~~

ब्याज की राशि SGST — 28744.58
CGST — 28744.58

कुल राशि 57489.16 रु

भुगतान हेतु DRC-07 में मांग-पत्र निर्गत करें।

BGST

Petitioner assails the impugned order on the ground of violation of principles of natural justice.

We find the order to be not assigning any reasons whatsoever. Also, we notice that prior to passing of the impugned order, no opportunity of hearing was ever afforded to the writ-petitioner. As such, there was gross violation of principles of natural justice in passing of the impugned order, which is hereby quashed with the following directions:-

(a) Petitioner shall appear before the appropriate authority on 18.07.2022, whereafter the proceedings shall commence afresh, affording opportunity of proper hearing to the petitioner, also enable to place on record additional material, if so required/desired and only thereafter the officer shall pass a fresh order assigning reason, in accordance with law.

(b) Needless to add that the officer shall assign sufficient reasons while passing the order.

(c) Copy of the order passed by the officer shall be provided to the petitioner.

(d) If aggrieved, petitioner may assail the said order in accordance with law.

(e) Petitioner shall fully cooperate and not take any adjournment.

(f) The matter be decided within three months.

(g) All issues are left open.

The petition stands disposed of in the aforesaid terms.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	