IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3995 of 2023

M/S Ashok Kumar Jha through its proprietor Ashok Kumar Jha, Male, aged about 67 years, S/o-Govind Jha, R/o-Laxmi Nath Nagar, Ward No.-06, Saharsa, District-Saharsa.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue, having its office at Room No. 46, North Block, P.O. and P.S. North Block, New Delhi.
2. The Central Board of Indirect Taxes and Customs through its Chairman, Ministry of Finance, Department of Revenue, having its office at Room No. 46, North Block, P.O. and P.S. North Block, New Delhi.
3. The State of Bihar through Chief Secretary, Government of Bihar, Old Secretariat, Patna.
4. Commissioner, Commercial Tax Department, Govt. of Bihar, New Secretariat, Patna.
5. Joint Commissioner of State Tax, Saharsa Circle, Saharsa.
6. Assistant Commissioner of State Tax, Saharsa Circle, Saharsa.

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr. Gyan Shankar, Advocate

For the Respondent/s : Mr. Vivek Prasad, GP-7

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-04-2023

The petitioner is concerned with the assessment order passed on 23.06.2022, which is produced as Annexure-1 in the writ petition. As per Section 62 of the Bihar Goods and Services Tax Act, 2017 ("BGST Act" hereafter) where a registered person fails to furnish the return under Section 39 or Section 45, even after the service of a notice under Section 46, the proper officer is empowered to assess the tax liability to the best of his judgment, within a period of five years from the date specified under Section 44 for furnishing of the annual return. Sub-section (2) of Section 62 also provides that when such an assessment order is made, if the registered person furnishes a valid return within thirty days of the service of the assessment order then the assessment order will stand withdrawn but the liability for payment of interest under sub-section (1) of Section 50 and the liability to late fee under Section 47 would continue.

The petitioner obviously did not comply with sub-section (2) of Section 62 by filing a return within one month of the issuance of the assessment order. Now, the Government of India has on the recommendation of the GST Council, brought out the following notification:-

[TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART II, SECTION 3, SUB-SECTION (i)]

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS

NOTIFICATION
NO. 06/2023 – CENTRAL TAX

New Delhi, the 31st March, 2023

S.O......(E).— In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred to as the said Act), the Central Government, on the recommendations of the Council, hereby notifies that the registered persons who failed to furnish a valid return within a period of thirty days from the service of the assessment order issued on or before the 28th day of February, 2023 under sub-section (1) of section 62 of the said Act, as the classes of registered persons, in respect of whom said assessment order shall be deemed to have been withdrawn, if such registered persons follow the special procedures as specified below, namely,-

(i) the registered persons shall furnish the said return on or before the 30th day of June 2023;

(ii) the return shall be accompanied by payment of interest due under sub-section (1) of section 50 of the said Act and the late fee payable under section 47 of the said Act,

irrespective of whether or not an appeal had been filed against such assessment order under section 107 of the said Act or whether or not the appeal, if any, filed against the said assessment order has been decided.

[F. No. CBIC-20013/1/2023-GST]

(Alok Kumar)
Director

Learned counsel for the petitioner submits that in accordance with the notification, a return has been filed and the liability to interest and late fee also satisfied. Definitely, the Assessing Officer would be entitled to verify whether there is due compliance under the notification, herein above extracted, and if the compliance is in accordance with the notification, the assessment order would stand withdrawn.

The writ petition stands allowed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

rajkishore/-

AFR/NAFR	
CAV DATE	
Uploading Date	26.04.2023.
Transmission Date	