IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6514 of 2021

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SIS Cash Services Pvt. Ltd. CH-5, Corner Hold Plot, Behind Andhra Bank, Sri Krishna Nagar, Kidwaipuri, Patna-800001 through its Authorized Signatory Prakash Kumar, Male, aged about 50 years, approximately, Son of Late Shyam Nandan Prasad, Resident of Block b 1/202, Majar Gali, Narayan Shree Apartment, Shekhpura, P.s.- Phulwari, District- Patna-800014

... ... Petitioner/s

Versus

1. Union of India (Ministry of Finance) through Finance Secretary, room No. 46, North Block, Central Secretariat, New Delhi-110001
2. The Commissioner of Central GST and Central Excise, Patna-1, 3rd Floor, C.R. Building (Annexe), Birchand Patel Path, Patna-800001
3. IDBI Bank Ltd. Virendra Smriti, 2nd Floor, 15/54-B, Civil Lines, Patna-800001
4. Assistant Commisioner, State Taxes Special Circle, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sriram Krishna, Advocate
For the Respondent/s	:	Mr. Anshuman Singh, Sr. SC, CGST & CX
For the State	:	Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 24-01-2024

The petitioner is aggrieved with the recovery of tax made despite the tax and interest having been remitted along with the filing of a return; though a delay occurred originally.

2. The Learned Government Advocate, however, submits that an order was passed under Section 62 of the Bihar Goods and Services Tax Act (for brevity, the Act) on

best judgment and in that circumstances, there cannot be any review at this stage. It is pointed out that the provision under Section 62 of the Act itself provides that if a return is filed and tax is paid within one month from the order, then necessarily the order would stand withdrawn. In the present case, there was delay in filing the appeal.

3. On facts, it has to be noticed that the assessee- petitioner failed to file the return of June 2019, and pay the tax thereon before the due date; which was on 20.07.2019. The Assessing Officer took up proceedings under Section 62 of the Act and passed Annexure-C order dated 02.09.2019 finding the total liability of Rs. 22,16,963.44/-

4. The petitioner filed the return and paid up the tax returned of Rs. 20,35,031/- on 04.10.2019. The specific contention taken up by the petitioner is that though the remittance was not within thirty days it was filed soon after.

5. We cannot but notice that the requirement under Section 62 of the Act is to make the deposit within a period of thirty days; which if not made, the statutory consequence will follow. The petitioner had paid the amounts on 04.10.2019, while the order passed by the Assessing Officer was on 02.09.2019. Excluding the date of passing of

order and also taking into consideration the fact that the order was served only on 03.09.2019, the remittance should have been made along with filing of return on or before before 02.10.2019, which was a holiday being Gandhi Jayanti. However, 03.10.2019 was a working day and the petitioner should have paid up the amounts by 03.10.2019. Though there is only one days delay, we find no reason to interfere with the order in proceedings under Article 226 of the Constitution of India, since any interference caused will go against the statutory provision.

6. However, we notice that as of now, the Central Board of Indirect Taxes and Customs has by Notification No. 53 of 2023- Central Tax, dated 02.11.2023 (S.O. 4767(E)) extended the time for filing appeal against an order passed by the Proper Officer on or before 31.03.2023 under Sections 73 and 74 of the BGST Act. This in fact extends the period for filing a delayed appeal beyond the one month period as provided under Section 107(4) of the BGST Act, on following the special procedure prescribed under the said Notification.

7. The special procedure prescribed under the Notification is seen from paragraph no. 2 to 6 which are extracted hereunder:-

"2. The said person shall file an appeal against the said order in FORM GST APL-01 in accordance with sub-section (1) of Section 107 of the said Act, on or before 31st day of January 2024:

Provided that an appeal against the said order filed in accordance with the provisions of section 107 of the said Act, and pending before the Appellate Authority before the issuance of this notification, shall be deemed to have been filed in accordance with this notification, if it fulfills the condition specified at para 3 below.

3. No appeal shall be filed under this notification, unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to twelve and a half per cent of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed, out of which at least twenty percent should have been paid by debiting from the Electronic Cash Ledger.

4. No refund shall be granted on account of this notification till the disposal of the appeal, in respect of any amount paid by the appellant, either on their own or on the directions of any authority (or) court, in excess of the amount specified in para 3 of this notification before the issuance of this notification, for filing an appeal under sub- section (1) of Section 107 of the said Act.

5. No appeal under this notification shall be admissible in respect of a demand not involving tax.

6. The provisions of Chapter XIII of the Central Goods and Service Tax Rules, 2017

(12 of 2017), shall *mutatis mutandis*, apply to an appeal filed under this notification."

8. Hence an appeal against an order under Section 73 or 74 has to be filed on or before 31.01.2024, and any appeal filed which is pending before the authority could also be considered as properly filed, even if there is delay in such filing. The will also apply to an order passed under Section 62 which provision is not withstanding anything contrary in Section 73 or 74. Under Section 62 too a mode of assessment is provided.

9. The petitioner thus, has a remedy of appeal from the best judgment assessment carried out under Section 62. Though the petitioner has filed return and paid the amounts, the Appellate Authority could definitely invoke its jurisdiction to interfere with the best judgment assessment in which event, the department would be liable to return the amounts paid as interest.

10. However, the Notification permits an appeal on or before 31.01.2024 on certain conditions, mentioned above, which has to be complied with. If the said conditions are complied with, definitely the appeal will be considered on merits. However, we make it clear that since equity has to be

applied to both parties, there shall be no interest payable to the petitioner on refund between 04.10.2019 and the date on which the refund is made, if the appellate order is passed within a period of three months. If the appeal is not disposed of within three months, necessarily the interest would be payable from the date of expiry of three month period stipulated hereunder.

11. We direct the petitioner to file an appeal before 31.01.2024, in accordance with the Notification, and the Appellate Authority will consider the same expeditiously.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	26.01.2024
Transmission Date	