

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16407 of 2024

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Mali Tractors Private Limited, through its Director Raj Kumar Tibrewal, Male aged about 57 Years, S/o-Narayan Prasad Tibrewal, Resident of Meerganj, P.O.- Begusarai, P.S.- Begusarai, District Begusarai, having its Registered Place of Business at 139C, G.D. College Road, Meerganj, P.O.-Begusarai, P.S.-Begusarai, District-Begusarai, Bihar 851101.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue, Government of India, Central Secretariat North Block, New Delhi-110001.
2. The State of Bihar through the Finance Secretary, Finance, Department Old Secretariat, Patna, Bihar 800015.
3. The Additional Commissioner of State Tax, Appellate Authority, Darbhanga Circle, Sales Tax Office (GST office), near Private Bus Stand, in Front of Central Gail, Laharia Sarai, Dist.-Darbhanga-846001.
4. The Assistant Commissioner of State Tax, Begusarai Circle, Sales Tax Office (GST Office), Near Nawab Chowk, in front of Gandhi Stadium, Dist.-Begusarai, Bihar-851101.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 16427 of 2024

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Mali Tractors Private Limited, through its Director Raj Kumar Tibrewal, Male, aged about 57 Years, S/o-Narayan Prasad Tibrewal, Resident of Meerganj, P.O.- Begusarai, P.S. Begusarai District Begusarai having its registered Place of Business at 139C, G.D. College Road, Meerganj, P.O.- Begusarai, P.S.-Begusarai, District-Begusarai, Bihar-851101.

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4. Assistant Commissioner of State Tax, Begusarai Circle, Sales Tax Office (GST Office), near Private Bus Stand, in front of Central Gail, Laharia Sarai, Dist.-Darbhanga-846001.

... .. Respondent/s



Appearance :

(In Civil Writ Jurisdiction Case No. 16407 of 2024)

For the Petitioner/s : Mr. Vinay Kumar Shraf, Advocate
Mr. Amit Kumar Singh, Advocate
Mr. Puneet Siddhartha, Advocate
For the Respondent/s : Dr. K.N. Singh, Additional Solicitor General
Mr. Anshuman Singh, Sr. SC. CGST & CX
Mr. Alok Kumar, Advocate
Mr. Vikash Kumar, SC-11
Mr. Shashank Shekhar, Advocate

(In Civil Writ Jurisdiction Case No. 16427 of 2024)

For the Petitioner/s : Mr. Vinay Kumar Shraf, Advocate
Mr. Amit Kumar Singh, Advocate
Mr. Puneet Siddhartha, Advocate
For the Respondent/s : Dr. K.N. Singh, Additional Solicitor General
Mr. Anshuman Singh, Sr. SC. CGST & CX
Mr. Alok Kumar, Advocate
Mr. Vikash Kumar, SC-11
Mr. Shashank Shekhar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 09-12-2024

The petitioner is aggrieved with the assessments made for the assessment years 2017-18 and 2018-19 respectively. For convenience, we refer to C.W.J.C. No. 16407 of 2024, the writ petition filed as against the assessment order for the year 2017-18.

2. The petitioner challenges Annexure-P/2 assessment order and Annexure-P/1 appellate order. The learned Counsel for the petitioner pointed out that with respect to the very same issue the petitioner was first issued a notice under Section 60(1) of the Central/Bihar Goods and Services Tax Act, 2017 (for brevity, the Act) after scrutiny of returns, which was



replied to by the petitioner. The notice was issued only since there was discrepancy in GSTR-1; monthly sales return and GSTR-3B; monthly returns comprising of the sales, input tax and the output tax payable. The discrepancy occurred only because of double entry of certain invoices for the months of September and October, 2017; when the GST regime had just commenced. A notice was sent as per Annexure-P/4 which was replied to by Annexure-P/5 and the proceedings were closed as per Annexure-P/6.

3. Again, a notice was issued under Section 73(1) of BGST Act as Annexure-P/9 which was dropped as per Annexure-P/10.

4. A further notice as per Annexure-P/17 was issued on audit, in pursuance to which also the petitioner filed a reply, which was accepted by the Audit Authority as seen from Annexure-P/14.

5. A further notice was issued at Annexure-P/21 pursuant to which Annexure-P/2 assessment order has been passed. An appeal was also filed which resulted in Annexure-P/1.

6. The petitioner's contention with respect to the assessment order has to be properly agitated in an appeal. The



assessment order itself was dated 23.06.2023 (Annexure-P/2) which was not appealed within the time provided for under Section 107 of the CGST Act; within the four month period provided.

7. However, the Central Board of Indirect Taxes and Customs came out with Notification No. 53 of 2023, Central Tax at Annexure-P/3, which provided for a window of filing an appeal with respect to orders which were passed prior to 31.03.2023. The time provided was up to 31.01.2024 and there was an additional condition that admitted tax plus 12.5% of the amounts in demand, shall be paid through the Electronic Cash Ledger. The petitioner filed an appeal on 20.01.2024 and complied with the condition of payment of admitted tax and deposit of 12.5% also. However, the petitioner's appeal stood dismissed as per Annexure-P/1 on the finding that the assessment order was dated on 23.06.2023 after 31.03.2023.

8. A Division Bench of this Court as per Annexure-P/23 had permitted appeals filed even with respect to orders passed after 31.03.2023.

9. We extract paragraph no. 4 and 5 of Annexure-P/23 judgment:

4. The difficulty insofar as its application to the petitioner's case is the date



on which the proper officer, being the Assessing Officer, having passed the order which was challenged in appeal, on 27.04.2023. The notification which was brought out on 02.11.2023 only permits appeals to be filed from orders passed by the proper officer on or before 31.03.2023, in cases in which it was not instituted in time or within the time permitted for a delayed appeal, and in cases where such delayed appeals beyond the stipulation in 107(4) has been rejected. The petitioner would not squarely fall under the notification.

5. We do not see any rationale for the date fixed of 31.03.2023, as a cut off date. We notice that the notification itself was brought out on 02.11.2023 and in such circumstances any order passed in at least three months before that date; the time provided for filing an appeal, ought to have been considered for such beneficial treatment.

10. Following the above reasoning, we find it appropriate to direct the Appellate Authority to consider the appeal on merits. To facilitate the same we set aside Annexure-P/1 issued for the year 2017-18 and direct the Appellate Authority to resume the appeal to its files and dispose it off on merits.

11. In C.W.J.C. No. 16427 of 2024, the assessment order is produced as Annexure-P/2 for the assessment year 2018-19 and the appellate order is produced as Annexure-P/1.



The facts are the same and hence, we set aside Annexure-P/1 on the same reasoning applied for the year 2017-18 and direct the resumption to files, of the said appeal and disposal on merits by the Appellate Authority as directed hereinabove.

12. The petitioner shall appear before the Appellate Authority with the copy of the judgment on 06.01.2025. On that date or on any other date fixed; with acknowledgment duly taken from the assessee or the authorized representative, the appeals shall be heard and disposed off on merits.

13. The writ petitions stand allowed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

aditya/-

AFR/NAFR	
CAV DATE	
Uploading Date	12.12.2024.
Transmission Date	

