IN THE HIGH COURT OF JUDICATURE AT PATNA
M/s Munna Traders

vs.
The State of Bihar & Ors.
Civil Writ Jurisdiction Case No. 9032 of 2023

08 August, 2023

(Hon'ble The Chief Justice and Honourable Mr. Justice Partha Sarthy)

Issue for Consideration

Whether penalty and interest imposed under the BGST Act, 2017 on excess claim of Input Tax Credit were justified.

Headnotes

Assessee has defaulted tax payment, based on an excessive claim of input tax credit, later deposited the input tax credit without interest due under Section 50; which attracted the penalty under Section 122. There can be no coercion found insofar as the deposit is concerned. The assessee, hence, has admitted the discrepancy with respect to excess claim of input tax credit and paid the amounts due on which interest was also due under Section 50 of the BGST Act. The non-payment of tax due and the failure to pay interest attracted the penalty imposed. (Para 12)

The procedure in Circular does not apply to the petitioner since he has admitted the allegation of excess claim and remitted the amounts due by way of tax.The petitioner has also not approached the Assessing Officer with the necessary evidence to substantiate the input tax credit; as provided in the Circular. The penalty levied was proper and a civil liability, attracted on the failure to pay the tax due, on a wrong claim of input tax credit. (Para 13); **Petition is dismissed. (Para 14)**

Case Law Cited

Price Waterhouse Coopers Pvt. Ltd. v. Commissioner of Income Tax, Kolkata-I, ***(2012) 11 SCC 316***
In Re: Cognizance for Extension of Limitation, ***Suo Motu Writ Petition (C) No. 3 of 2020, Supreme Court of India***

List of Acts

Bihar Goods and Services Tax Act, 2017 (Sections 50, 61, 73, 107, 109, 122

List of Keywords

Bihar GST Act 2017; Input Tax Credit (ITC); Excess ITC claim; Interest under Section 50; Penalty under Section 122; Appeal limitation under Section 107(4); CBIC Circular 27.12.2022; Extension of limitation due to COVID-19

Case Arising From

Order of the Assistant Commissioner of State Taxes, Lakhisarai Circle, imposing interest and penalty on the petitioner under the BGST Act, 2017.

Appearances for Parties

For the Petitioner: Mr. Manoj Kumar Keshri, Advocate
For the Respondents: Mr. Vivek Prasad (GP7)

Headnotes Prepared by Reporter: Amit Kumar Mallick, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9032 of 2023

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M/s Munna Traders, having its place of business at Golapar, Barbigha, Town and District Sheikhpura, through its Proprietor Manoj Kumar, aged about 50th years, Male, son of Late Raghu Sao, Resident of At P.O. and P.S. Barbigha, Town and District Sheikhpura.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Additional Commissioner of State Taxes (Appeal), Bhagalpur Division, Bhagalpur.
3. The Assistant Commissioner of State Taxes, Lakhisarai Circle, Lakhisarai.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Manoj Kumar Keshri, Advocate
For the Respondent/s : Mr. Vivek Prasad (GP7)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 08-08-2023

The petitioner, an assessee, under the Bihar Goods and Services Tax Act, 2017 (for brevity, 'BGST Act') is aggrieved with the interest and penalty imposed on the assessee for excess claim of input tax credit, which stood paid subsequent to a notice issued under the BGST Act. The order imposing penalty is produced as Annexure-4 and an appeal filed, with delay, stood rejected on account of the delay being in excess of that which is permitted condonation under Section 107(4) of the BGST Act.

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2. Learned counsel for the petitioner at the outset submits that there is a further remedy available before the Tribunal, which has not been constituted under Section 109 of the BGST Act. It is also pointed out that in many cases, this Court grants a stay of recovery on payment of 20% of the balance tax due, till the Tribunal is constituted and an appeal is enabled. Further, it is pointed out that there was no excess claim of ITC and the petitioner has the invoices, which could be produced and the Assessing Officer is enjoined upon to consider the same as per the Circular bearing F. No.CBIC-20001/2/2022-GST, Government of India, Ministry of Finance, Department of Revenue, Central Board of Indirect Taxes and Customs, GST Policy Wing, New Delhi, dated 27.12.2022. The payment made of the excess claim was only under coercion of the respondent. Reliance is also placed on the decision of the Hon'ble Supreme Court in ***Price Waterhouse Coopers Pvt. Ltd. v. Commissioner of Income Tax, Kolkata-I, (2012) 11 SCC 316*** to urge that no penalty would be leviable in the facts and circumstances of the case.

3. The learned Government Advocate contended that it was only in the scrutiny of the return, for the tax period July, 2017 to March, 2018, that the discrepancies were noticed, on

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account of which notice was issued as per Annexure-A. The petitioner paid the differential amount of tax, but did not pay the interest due, despite a notice issued under Section 73(1) of the BGST Act. It was hence the Assessing Officer passed the order imposing interest and penalty to the tune of Rs.3,51,532/-. It is also pointed out that there was eleven months delay in filing the appeal before the first appellate authority and there could not have been a condonation of delay. The first appeal having been dismissed on the ground of delay, there is no scope for further appeal to the Tribunal, when even this Court would not be entitled to condone the delay beyond the period specifically provided under the enactment. The petitioner despite a notice for remitting the interest due, having not remitted it, was liable to penalty, which cannot be absolved as per the statutory provisions.

4. The petitioner had filed the returns for the assessment year 2017-18 and on scrutiny under Section 61 of the BGST Act, three discrepancies were noticed. ITC claim under GSTR-1 was found to be in excess of that under GSTR-2A/2B to the extent of Rs.4,62,542/-. The turn-over, as indicated in GSTR-9C and RT-1 GTO, also were at variance. The Assessing Authority also pointed out that the tax has been paid

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mainly by I.T.C.

5. A reply was filed by the petitioner in which it is stated that there was a discrepancy in the input tax credit claim only because the invoices issued by the supplier had not been uploaded on the GST portal. As far as the difference in turn over, it was stated to be as per the financial statement under the Bihar Value Added Tax Act, the predecessor enactment. Insofar as the taxes being paid by the I.T.C, it was asserted that the input tax credit ensured that there is no further tax liability on the assessee/petitioner.

6. Admittedly, the assessee paid the difference of input credit tax amount coming to Rs.4,71,290/- as on 08.12.2021 evidenced by Annexure-3. The assessee has made a laconic statement in the memorandum that it was under the coercion of the respondent assessing authority that the amount of differential tax was paid up. We are not prepared to reckon such coercion having been employed, especially when the contention is raised after two years in a writ petition filed. Even the appeal was delayed by eleven months.

7. As far as the delay occurred in filing the appeal, the Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020**, In Re: Cognizance For Extension of Limitation due to

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the pandemic situation saved limitation between 15.03.2020 till 28.02.2022. It was also directed that an appeal could be filed within ninety days from 01.03.2022. Hence, an appeal could have been filed on or before 29.05.2022, which provision was not availed by the petitioner herein. The Hon'ble Supreme Court also declared that if a longer period than 90 days is provided in a Statute, then that longer period will apply. In the BGST Act, u/s 107(4) there is a provision for condonation of delay, if the appeal is filed delayed, within one month of expiry of limitation. Even if that be deemed to be applicable then the appeal ought to have been filed by 28.06.2022.

8. The appeal is filed only on 31.01.2023 after seven months from the date on which even the limitation period as stipulated by the Hon'ble Supreme Court, expired.

9. In so far as the second appeal, as rightly pointed out by the Government Advocate, no appeal is maintainable from the order passed in the first appeal since it was dismissed on the ground of delay. Section 107 of the BGST Act having provided a specific time within which a delayed appeal can be entertained by the first appellate authority on sufficient cause for the delay being shown; there is no scope for a further appeal from an order rejecting first appeal filed belatedly, beyond the time

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provided. The Tribunal or even this Court would not have the jurisdiction to direct such consideration. Hence, there is no scope for following the orders, similar to the one passed at Annexure-7 (***CWJC No.1920 of 2023 titled as Angel Engicon Private Limited v. The State of Bihar*** disposed of on 16.02.2023).

10. Now, we come to the interest and penalty levied on the petitioner and the applicability of the decision in the case of ***Price Waterhouse Coopers Pvt. Ltd.***(supra).

11. In the cited decision, the Hon'ble Supreme Court at the outset observed that the imposition of penalty in that case was not justified on the facts of the case. Therein, a provision for payment of gratuity was claimed as deduction, in the statement filed along with the return; which also contained a further statement that the same is not allowable. The Assessing Officer saddled the assessee with penalty at 300% of the tax sought to be evaded by furnishing inaccurate particulars. The Hon'ble Supreme Court directed the assessee to file an affidavit and based on the explanation offered found the mistake committed to be "*silly mistake*" which also stood acknowledged by the Tribunal as well as by the High Court. On the particular facts, the Hon'ble Supreme Court set aside the penalty imposed

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on the assessee under the Income Tax Act.

12. In the present case, it is seen that the assessee has defaulted tax payment, based on an excessive claim of input tax credit, later deposited the input tax credit without interest due under Section 50; which attracted the penalty under Section 122. We have already found that there can be no coercion found insofar as the deposit is concerned. The assessee, hence, has admitted the discrepancy with respect to excess claim of input tax credit and paid the amounts due on which interest was also due under Section 50 of the BGST Act. The non-payment of tax due and the failure to pay interest attracted the penalty imposed.

13. The reliance on the Circular, in the facts of the present case is also not sustainable. The Circular was issued only to get over the difficulties in the nascent stage of the goods and services tax regime. There was a specific method provided by which input tax credit claims could have been sustained even if some discrepancies in the various returns filed were noticed. A procedure was stipulated under paragraph 4 by which the discrepancies could be rectified and the claim permitted by the Assessing Officer. The said procedure does not apply to the petitioner-assessee since he has admitted the allegation of excess claim and remitted the amounts due by way of tax. The petitioner - assessee has also not approached the Assessing Officer with the

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necessary evidence to substantiate the input tax credit; as provided in the Circular. We also have to notice paragraph-6 of the Circular which specifically indicates that the instructions in that Circular will only apply to the ongoing proceedings in scrutiny/audit/investigation, etc. for the financial years 2017-18 and 2018-19 and not to the completed proceedings. The instructions would also apply in the respective years with respect to any adjudication or appeal proceedings, pending. In the present case, there is no proceeding of scrutiny or appeal pending and there cannot be any revision of the input tax credit since the allegation of excess claim has been admitted and differential amount paid by the assessee. The penalty levied was proper and a civil liability, attracted on the failure to pay the tax due, on a wrong claim of input tax credit.

14. We find absolutely no reason to entertain the writ petition and dismiss the same.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sunil/-

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CAV DATE	
Uploading Date	11.08.2023
Transmission Date	

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