(2025) 07 PAT CK 1311

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.2073 of 2025

M/S Kumar Brothers — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 23-07-2025

Acts Referred:
Central Goods and Services Tax Act, 2017 — Section 4, 75

Citation : (2025) 07 PAT CK 1311

Hon'ble Judges : P. B. Bajanthri, J;S. B. Pd. Singh, J

Bench : Division Bench

Advocate : Bijay Kumar Gupta, Vikas Kumar, Vivek Prasad, Roona, Sanjay Kumar, Anshuman Singh

Final Decision : Allowed

Judgement

P. B. Bajanthri, J

1. In the instant petition, the petitioner has prayed for the following reliefs -

"i) The demand order vide Process No.-Nil dated 24.05.2023 (as contained as Annexure P-2) and Summary of demand order vide Reference No.-ZD100523011093A, dated 24.05.2023 (as contained in Annexure-P-2A) in form of DRC-07 passed by the Respondent No.-6 demanding tax, interest and penalty Rs. 3,09,76,669.00 under the CESS, total amounting to Rs. 3,09,76,669.00 for the period July 2017 to March -2018 be quashed as the Demand Order is time barred in view of the provision of Section 73(9)&(10) BGST/CGST Act, 2017.

ii) For issuing a writ of certiorari or any other appropriate writ quashing/ setting aside impugned Order dated 21.11.2024 for the period 2017 -2018 passed by the Appellate Authority (P 3 A) which rejected Appeal of the Petitioner on the ground of limitation in violative of principles of natural justice and thus liable to be set aside.

iii) For issuing a writ of certiorari or any other appropriate writ quashing/ setting aside the Notification No. -13/2022 CT dated 05.07.2022 extending the time limit specificed under Section 73(10) to pass order under S 73(9) of the CGST/BGST Act, 2017 by virtue of the powers under section 168 A of the Act which is unjustified as extension has to be for special circumstances mentioned in the section itself.

iv) For issuing a writ of certiorari or any other appropriate writ quashing / setting aside show cause notices dated 06.01.2023 and order dated 24.05.2023 passed by the Respondent No-6 as the show cause notice and order are violative of Article 14 of the Constitution of India as the Respondent No-1 &- 2 while issuing notifications extending time line for passing orders for imposing tax, interest and penalty for the period 2017-2018 despite the country was in the grip of Covid-19 and this action is violative of Article 14 of the Constitution of India as beneficial provisions for the registered persons were not extended simultaneously for granting any relief(s) to which the petitioner is otherwise entitled to.

v) The order vide Process No-Nil dated 24.05.2023 (as contained as Annexure-P-2) and Summary of demand order vide Reference No.-ZD100523011093A, dated 24.05.2023 (as contained in Annexure-P-2A) in form of DRC-07 passed by the Respondent No-6 demanding tax, interest and penalty Rs. 3,09,76,669.00 under the CESS, total amounting to Rs. 3,09,76,669.00 for the period July 2017 to March -2018 in Form GST DRC 07 be quashed as the Demand Order has been passed ex parte without providing "Personal Hearing" u/s 75(4) BGST/CGST Act, 2017 and so it is violative of Principle of natural justice.

vi) For granting any other relief (s) to which the petitioner is otherwise found entitled to in accordance with law."

2. Petitioner has assailed the impugned orders on two counts namely limitation insofar as initiation of proceedings by the concerned official Respondent and non-compliance to Sub-Section 4 of Section 75 of CGST Act, 2017. Among the several grounds these two grounds have been urged during the course of the day.

3. Learned counsel for the State, on instruction, submitted that there is non-compliance of Sub-Section 4 of Section 75 of CGST Act, 2017. Having regard to the admitted fact that respondents have not complied statutory provision like Sub-Section 4 of Section 75 of CGST Act, 2017, on this sole ground the petitioner has made out a case so as to interfere with the impugned actions of the respondents dated 24.05.2023 (Annexure P-2), 24.05.2023 (Annexure P-2A), 21.11.2024 (Annexure P-3A),

05.07.2022 (Annexure P-6), show cause notices dated 06.01.2023 and order dated 24.05.2023 are stand set aside and the matter is remanded to the concerned authority to proceed afresh from the defective stage insofar as compliance of Sub-Section 4 of Section 75 of CGST Act, 2017.

4. The petitioner shall co-operate with the official respondents in the proceedings and respondents should provide due opportunity of hearing to the petitioner and

complete proceedings within a period of four months from the date of receipt of this order. The concerned authorities are exercising quasi judicial functions, therefore, they are requested to peruse the Hon’ble Supreme Court’s decision in the case of Oryx Fisheries Private Ltd. vs. Union of India & Ors. reported in (2010) 13 SCC 427, Paragraph No. 47, so as to complete each and every procedural aspect insofar as undertaking the quasi-judicial functions in the present case.

5. With the above observation, the present CWJC No. 2073 of 2025 stands allowed in part.

