

IN THE HIGH COURT OF JUDICATURE AT PATNA

Rakesh Ranjan

Vs.

The State of Bihar & Ors.

CIVIL WRIT JURISDICTION CASE NO. 1200 of 2023

05 May 2023

(Hon’ble The Chief Justice And Hon’ble Mr. Justice Rajiv Roy)

Issue for Consideration

Whether the appeal filed under Section 107 of the BGST Act was barred by limitation and if such delay could be condoned.

Whether absence of a digital signature in the assessment orders rendered them invalid under Rule 26(3) of the BGST Rules, 2017.

Headnotes

Order impugned in the appeal was dated 28.12.2021. An appeal could have been preferred on or before 29.05.2022. Hence, there is no question of condonation of delay. (Page 2)

A mere omission to put the signature cannot lead to invalidation of the assessment proceeding. Moreover, by virtue of sub-section (2) of Section 160, wherein the order has been acted upon by the person to whom it is issued and where such services has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication. Before the Assessing Authority, the petitioner failed to appear in the 30 days’ time provided after the show cause notice. Before the Appellate Authority, it is admitted that there was no such contention taken. Even before this Court, the memorandum of writ petition does not show such contention having been raised. Such a contention should have been taken before the Assessing Officer in so far as the absence of signature on the show cause notice or with respect to the assessment order, before the Appellate Authority. Contention raised does not commend the court to interfere with the orders passed. The writ petition is dismissed. (Page 6, 7, 8)

Case Law Cited

Suo Motu Writ Petition (C) No. 3 of 2020, In Re: Cognizance for Extension of Limitation (Supreme Court); State Bank of India & Anr. v. Ajay Kumar Sood, Civil Appeal No. 5305 of 2002; Ramani Suchit Malushte v. Union of India & Ors., W.P. No. 9331 of 2022 (Bombay High Court)

List of Acts

Bihar Goods and Services Tax Act, 2017; Bihar Goods and Services Tax Rules, 2017; Information Technology Act, 2000

List of Keywords

BGST Act; Assessment Order; Section 73; Section 107; Rule 26(3); Digital Signature; Condonation of Delay; Sua Motu Limitation Extension; Auto-populated Order; Section 169, Section 160

Case Arising From

Assessment Order under Section 73 of the BGST Act, 2020–2021

Appearances for Parties

For the Petitioner(s): Mr. D.V. Pathy, Advocate; Mr. Hiresk Karan, Advocate; Mr. Sadashiv Tiwari, Advocate
For the Respondent(s): Mr. Vikash Kumar (SC-11)

Headnotes Prepared by Reporter: Amit Kumar Mallick, Adv.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1200 of 2023

=====

Rakesh Ranjan a proprietary concern having its office at Ashok Nagar, Gaya, Bihar 823001 through its Proprietor Rakesh Ranjan (Male) aged about 29 years son of Bharat Deo Singh Yadav, resident of Post- Rampur, Ashok Nagar, Gaya, Bihar- 823001.

... .. Petitioner/s

Versus

- 1. The State of Bihar through Commissioner of State Tax, Bihar, Patna having its office at Vikas Bhawan, Patna.
- 2. Addl. Commissioner of State Tax, (Appeal) Magadh Division, Gaya.
- 3. Asst. Commissioner of State Tax, Gaya, Magadh.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.D.V.Pathy, Advocate
Mr. Hiresh Karan, Advocate
Mr. Sadashiv Tiwari, Advocate
For the Respondent/s : Mr.Vikash Kumar (SC-11)

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
and

HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-05-2023

The petitioner, an assessee under the Bihar Goods and Services Tax Act, 2017 (for brevity “BGST Act”) is aggrieved



with Annexure-2 series orders passed against him for the Assessment Year 2020-2021, under Section 73 of the BGST Act. An appeal was filed which was delayed and the same stood dismissed for reason of the delay being more than that prescribed under the statute. The appellate order specifically noticed Section 107 of the Bihar Goods and Services Tax Act, 2017 (“BGST Act” hereafter) which permits an appeal to be filed within three months and also apply for delay condonation with satisfactory reasons within a further period of one month. The appellate authority also took into account the saving of limitation granted by the Hon’ble Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020, In Re: Cognizance For Extension of Limitation. Therein, due to the pandemic situation limitation was saved 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. Here, the order impugned in the appeal was dated 28.12.2021. An appeal could have been preferred on or before 29.05.2022. Hence, there is no question of condonation of delay. Neither the Appellate Authority nor this Court has the power to condone the delay beyond the period specified in the statute and the period as extended by the Hon’ble Supreme Court. In fact, the Hon’ble Supreme Court had specifically



found that if a longer period of limitation is provided in the statute, then the longer period would apply. In the BGST Act, under Section 107(4), there is a provision for condonation of delay for a period of one month after the limitation is over. Even if it be deemed that the said period could be availed of, the appeal ought to have been filed by 28.06.2022, but the appeal was filed only on 19.07.2022.

The learned counsel had also referred to Annexure-4 judgment of this Court which was during the pandemic period and when the Supreme Court had stayed the provision for limitation. It is also seen from the order that at the relevant point in time the entire area was inundated. These mitigating circumstances do not arise in the present case.

Faced with the above situation, the learned counsel would take up a fresh argument that Rule 26(3) of the Bihar Goods and Services Tax Rules, 2017 specifically provided for a digital signature in all orders issued under the Act, which is prominently absent in the orders impugned. The learned counsel has also placed reliance on a decision of the Hon'ble Supreme Court in **State Bank of India and another v. Ajay Kumar Sood, Civil Appeal No. 5305 of 2002** decided on 16.08.2022 and a Division Bench decision of the High Court of Bombay in



**Ramani Suchit Malushte v. Union of India & Ors., Writ
Petition No. 9331 of 2022** uploaded on 26.09.2022.

As far as the decision of the Hon'ble Supreme Court is concerned, those were general directions issued specifically with respect to accessibility of judgments to the general public; which would not be applicable in so far as an order issued under a statute, applicable only to the assessee. As far as the decision of the Bombay High Court is concerned, their Lordships, looked at Rule 26(3) and found that Chapter III of the Maharashtra Goods and Services Tax Rules, 2017, which is in *pari materia* to Rule 26(3) of the Central Goods and Services Tax Rules, 2017 requires authentication by a digital signature certificate or through e-signature or by any other mode of signature or verification notified in that behalf. With all the respect at our command, we are unable to follow the dictum laid down by the Division Bench of the High Court of Bombay, on a reading of the provision.

Rule 26(3) of the Central Goods and Services Tax Rules, 2017 which should be in *pari materia* with the Maharashtra Goods and Services Tax Rules, 2017 speaks of issuance of notices, certificates, orders electronically by the proper officer through digital signature certificate or e-signature



as specified under provisions of the Information Technology Act, 2000 (21 of 2000) or verified by any other mode of signature or verification as notified by the Board in this behalf. Hence, verification by any other mode of signature ordinarily acceptable would suffice. In the present case, we called for the files of assessment, which were produced across the Bar by the learned Government Advocate. We see that an intimation of liability under Section 73(5) was issued on 28.10.2021 by the Assistant Commissioner State Tax Gaya Circle, Gaya. A show cause notice was issued likewise dated 18.12.2021. After giving an opportunity, which the assessee failed to avail within 30 days, an order was passed on 28.12.2021. We have seen the orders in the files with the signature of the Assistant Commissioner State Tax, Gaya Circle, Gaya. All these orders were also auto-populated as is provided under the Act (Section 169) which provides by sub-Section (d) that any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served *inter alia* by making it available on the common portal.

We may also fruitfully refer to Section 160 of the BGST Act which is extracted hereunder:-

**“160. Assessment proceedings, etc.
not to be invalid on certain grounds.—**



(1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law

(2) The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication”.

A mere omission to put the signature cannot lead to invalidation of the assessment proceeding. Moreover, by virtue of sub-section (2) of Section 160, wherein the order has been acted upon by the person to whom it is issued and where such services has not been called in question at or in the earlier



proceedings commenced, continued or finalised pursuant to such notice, order or communication. Even at the last hearing date, we had specifically queried the learned counsel for the petitioner as to whether any such claim was made before the Assessing Officer, the Appellate Authority or at least before this Court. Before the Assessing Authority, the petitioner failed to appear in the 30 days' time provided after the show cause notice. Before the Appellate Authority, it is admitted that there was no such contention taken. Even before this Court, the memorandum of writ petition does not show such contention having been raised. On the last posting date, on 27.04.2023, a query was raised by us and the petitioner then, has filed a supplementary affidavit dated 28.04.2023 raising the contention of absence of digital signature. Going by the provision under sub-section (2) of Section 160, as extracted herein above, such a contention should have been taken before the Assessing Officer in so far as the absence of signature on the show cause notice or with respect to the assessment order, before the Appellate Authority.

We are of the opinion that the contention raised does not commend us to interfere with the orders passed. On the question of delay, we have already held that it cannot be



condoned. The writ petition would stand dismissed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Anushka/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	17.05.2023
Transmission Date	

