

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10743 of 2024

S.S. Enterprises

... .. Petitioner/s

Versus

Union of India & Ors.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. D.V.Pathy, Advocate

For the Respondent/s : Dr. K.N.Singh, ASG

Mr. Anshuman Singh, Sr. SC, CGST & CX

Mr. Devansh Shankar Singh, Advocate

Mr. Abhijeet Gautam, AC to ASG

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

3 30-07-2024

The petitioner is concerned with the Assessment Year 2018-19 and Annexure P-3 is the assessment order passed on 19.04.2024 under the Central Goods and Services Tax Act, 2017. The question raised is primarily on limitation.

2. According to the petitioner, the due date of furnishing the annual return as per Rule 80 of the Central Goods and Services Rules, 2017 is on the 31st day of December, following the end of such financial year. Section 73(10) speaks of a proceeding to be initiated within three years from the due date of filing of annual returns. A conspectus of the above provisions would indicate that Rule 80 prescribes the time within which return is to be filed, under Section 44(1) of the Act



of 2017 which is up to the 31st day of December following the end of such financial year. A registered person is prohibited in filing an annual return at any time after the expiry of three years from the due date of furnishing the said annual return as is provided under Section 44(2). However, the proceeding under Section 73(10) has to be initiated within three years from the due date of filing of annual return, which is as provided under Rule 80.

3. In the present case, the Assessment Year is 2018-19 and the end of the financial year comes on 31.12.2019, within which time as per Rule 80, an annual return has to be filed. The petitioner filed the annual return before 31.12.2019 and the present proceeding is initiated on 19.04.2024, as per Annexure P-3. The three year period as provided under Section 73(10) ends on 31.12.2022. The ground of limitation is raised on this count.

4. The learned ASG specifically points out that the due date for filing return was extended from 31.12.2019 to 31.10.2020 and later to 31.12.2020, by Annexure P-3. It is further argued that since 31.12.2020 falls within the period in which the Hon'ble Supreme Court extended the limitation period, as per *Suo Motu Writ Petition (C) No. 3 of 2020, Cognizance for Extension of Limitation, In Re (2021) 5 SCC*



452., the period for filing of return stands further extended. The Hon'ble Supreme Court held that all limitations which occurs between 15.03.2020 till 28.02.2022 will stand extended for a further period of three months. Hence, the contention of the learned ASG is that it stands extended upto 28.05.2022 and three years from that date is 19.04.2024. The above contention would be applicable only if the due date stands extended to 31.10.2020 and 31.12.2020.

5. *Prima facie*, we are of the opinion that the extension as provided in the second proviso to Section 44(2) is only with respect to the filing of a return even after the expiry of the further period of three years, from the due date of furnishing the annual return. Sub-section (2) as we notice speaks of any annual return to be filed within three years from the due date of furnishing the said annual return. Section 73(10) we reiterate specifies three years from the due date of filing of annual return and not three years from the extended date of filing an annual return under Section 44(2). Further, it has to be noticed that the proviso under Sub-section (2) empowers the Government to issue a notification and the notification produced before us dated 28.10.2020 has been issued by the Commissioner who does not have such power. The notification is also issued under



the proviso to Section 44(1) which empowers the Commissioner to exempt any class of registered persons from filing annual returns under the provision and not for extension of due date for filing of annual returns or extension of the period provided under Sub-section (2), for filing of annual returns.

6. In the above circumstances, on the *prima facie* view expressed above, we grant an interim stay of the Annexure P-3 order.

7. Counter affidavit, if any, shall be filed within three weeks.

8. Post on 11.09.2024.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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