

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11021 of 2024

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M/s Kedia Enterprises a Proprietorship Firm, and having its Registered Office at 17, Sanoli Chowk, Gulabbagh, Post Office-Gulabbagh, Police Station-Sadar Purnea, District-Purnea, PIn Code-854326, Bihar through its Authorised Representative Namely Manoj Kumar Verma, male, aged about 55 Years, S/o Shri A.N. Prasad, resident of 1/1B, Aftab Mosque Lane, Police Station and Post Office-Alipore District-Alipore, Kolkata-700027, West Bengal. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Commercial Tax Department, Patna, Bihar.
2. The Joint Commissioner of State Tax, Bhagalpur Division, Bhagalpur, Bihar. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anubhav Khowala, Advocate
For the Respondent/s : Mr. Vikash Kumar, SC- 11

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-09-2024

1. The petitioner is aggrieved with the order passed at Annexure P/8 dated 18.04.2024 and the ground raised is of violation of the provision under Section 129 (3) of the Central Goods and Services Act, 2017 (for brevity 'the Act').

2. The contention is that the order has not been passed within 7 days of service of notice. Admittedly, the vehicle which was carrying the petitioner's goods were detained by the authority as per Annexure P/3 on 30.03.2024. A physical verification was conducted on the very same day, which is evident from Annexure P/5. A notice was uploaded in the portal



which is seen at Annexure P/7 dated 04.04.2024. This has the signature of the representative of the petitioner and hence the notice was served within 7 days of detention, which was on 30.03.2024. The further stipulation in Section 129 (3) is that an order should be passed within 7 days from service of notice.

3. In the present case, by Annexure P/7 notice dated 04.04.2024, the petitioner was given time up to 11.04.2024 to file a reply. The 11th was a public holiday and hence the petitioner filed a reply on 12.04.2024. The order was passed on 18.04.2024 while it had to be passed at least on 12.04.2024 since the 11th was a public holiday.

4. The learned Counsel for the petitioner would rely on a judgment of the Division Bench of this Court in ***C.W.J.C No. 7985 of 2024 (Pawan Carrying Corporation vs Commissioner CGST & Central Excise & Ors)***. It is submitted that no penalty order could have been passed beyond the limitation period under Section 129 (3) of the Act.

5. The learned Government Advocate on the other hand relies on ***CWJC No. 4924 of 2023 (M/s Sangam Wires vs the State of Bihar & Ors)*** dated 24.04.2023. It is argued that if the owner of the goods approached the officer, then the penalty would be imposed under Section 129 (1)(a) leading to release of



the goods released and if not, proceedings should be taken under clause (b) of Section 129 (1). In the present case, the petitioner was given time up to 11th and since the reply was filed on the 12th, the said date should be deemed as the date of service of notice. It is also contended that the petitioner had remitted the amounts on 24.04.2024, which makes applicable sub-section (5) of Section 129 of the Act.

6. In *M/s Sangam Wires (supra)*, according to us is not at all applicable since that was a case in which, on the date of issuance of notice, the order was also passed, where we found that there is clear violation of principles of natural justice.

7. In *Pawan Carrying Corporation (supra)*, though a notice was issued within the time provided in Section 129 (3), the order was passed delayed after about 19 days.

8. The specific contention raised by the petitioner also is on Annexure P/2, a circular issued under Section 68 of the C.G.S.T Act read with Rule 138 of the C.G.S.T Rules, 2017. In that it is specifically directed, as per Paragraph No. 2 (g), that an order of detention in FORM GST MOV-06 and a notice in FORM GST MOV-07 has to be in accordance with sub-section (3) of Section 129 of the CGST Act. Here, despite the notice having been issued within time, the petitioner was granted the entire



limitation period for filing a reply. The petitioner did file the reply on the last date, in which event the Authority ought to have passed an order on that date itself, after considering the reply. The Authority having delayed the matter, the mandate of Section 129 (3) is not followed.

9. Insofar as the contention under Section 129 (5), there is no proceeding to be concluded as on the date of payment, which is on 24.04.2024, since already an order was passed on 18.04.2024. It is also the assessee's submission that the payment was made only to get release of the vehicle, which payment was also as against the orders passed and not under Section 129 (1)(a) of the Act.

10. In the above circumstances, we are of the opinion that the impugned order cannot be sustained. We set aside the impugned order and direct refund of the amounts paid.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Shiv/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	26.09.2024
Transmission Date	N/A

