

GAHC010024012020



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : PIL 15/2020

1:ALL INDIA FEDERATION OF TAX PRACTITIONERS AND ANR
REGD OFFICE AT 215, REWA CHAMBERS 31, NEW MARINE LINES,
MUMBAI- 400020 AND ITS EASTERN OFFICE AT KOLKATA, WEST BENGAL
COVERING ALL THE NORTH EASTERN STATES AND REP. BY SRI PRITAM
BARUAH, VICE CHAIRMAN (EAST ZONE) OF THE FEDERATION

2: TAX BAR ASSOCIATION
GUWAHATI
SHREE RAM MARKET
2ND FLOOR
CHATRIBARI
GUWAHATI- 781001
REP
BY SRI AMIT PAREEK
SECRETARY OF THE ASSOCIATIO

VERSUS

1:THE UNION OF INDIA AND 3 ORS
REP. BY THE SECRETARY TO THE GOVT OF INDIA, MIN OF FINANCE,
DEPTT OF REVENUE, NEW DELHI

2:GST COUNCIL
5TH FLOOR
TOWER-II
JEEVAN BHARTI BUILDING
JANAPATH ROAD
CONNAUGHT PLACE
NEW DELHI- 110001

3:GOODS AND SERVICE TAX NETWORK
EAST WING
WORLD MARK-1

AEROCITY
NEW DELHI

4:THE UNDER SECRETARY
TO THE GOVT OF INDIA
MIN OF FINANCE
DEPTT OF REVENUE
NORTH BLOCK
NEW DELHI- 11000

Counsel for petitioners : Dr. Ashok Saraf, Senior Advocate
Mr. S Chetia

Counsel for respondents : Mr. SC Keyal, Assistant Solicitor General of India

BEFORE
HON'BLE THE CHIEF JUSTICE MR. AJAI LAMBA
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

04.02.2020

(Ajai Lamba, C.J.)

All India Federation of Tax Practitioners, Registered Office at 215, Rewa Chambers, 31, New Marine Lines, Mumbai 400020 and its eastern office at Kolkata, West Bengal covering all the North Eastern States and represented by Shri Pritam Baruah, Vice Chairman (East Zone) of the Federation AND **Tax Bar Association**, Guwahati, Shree Ram Market, 2nd Floor, Chatribari, Guwahati– 781001, represented by Shri Amit Pareek, Secretary of the Association, have preferred this petition in Public Interest.

Dr. Saraf, learned Senior counsel has addressed the Court. It has been projected by Dr. Saraf that non-functioning of GST portal system for a couple of days including on 31.1.2020 which happened to be the last date for submitting GSTR-9 and 9C returns is the cause of filing the petition. To buttress the argument, learned senior counsel has pointed out that there are so many technical glitches in the computer system that tax payers are not able to file their returns in time. On grievance being raised, a ticket is issued, which however, without resolution expires. Representations are made which also find reflected on the GST portal, however, no decision in regard to representations is taken.

Dr. Saraf has impressed on the Court that such glitches in the system are causing immense revenue loss to the State. The traders have all intentions of filing returns and paying taxes however, they are unable to pay taxes on time because of such technical issues. It has been projected that the returns cannot be filed on time because of defective system, however, the tax payers are penalized for late filing. The tax payers who access the system are informed by the portal that a number of other persons are in the process and therefore, the tax payers are required to wait.

2. Mr. Keyal contends that let a fresh representation be filed. Mr. Keyal has assured the Court that a decision on the representation would be taken at the highest level within a week of its filing.

3. Dr. Saraf states that detailed representation would be filed online and a copy thereof would be handed over to Mr. Keyal by tomorrow evening.

4. So far as the petition in particular is concerned, the following prayer has been made;

“In the premises aforesaid, it is most respectfully prayed that Your Lordships may graciously be pleased to issue a rule directing the respondents to show cause as to why a writ in the nature of Mandamus and/or any other appropriate writ of like nature should not be issued directing and commanding the Respondents to extend the date of filing of the GST Annual Return and GST Audit Form (Form 9 and Form 9C) for a reasonable time and/or allow the petitioner to submit the GST Annual Return and GST Audit Form (Form 9 and Form 9C) without payment of late fee and penalty and also issue a direction to make the GST portal system workable and technical glitch free before imposition of any penalty and on hearing cause and causes as may shown and after hearing the parties, be pleased to make the Rule absolute and/or pass such order/orders and or further order/orders as may deem fit and proper.

-AND-

In the interim, Your Lordship may further be pleased to extend the date of filing of the GST Annual Return and GST Audit Form (Form 9 and Form 9C)

for a reasonable time and/or allow the petitioner to submit the GST Annual Return and GST Audit Form (Form 9 and Form 9C) without payment of late fee and penalty and/or pass such interim order(s) as Your Lordship may deem fit and proper.”

5. It is the conceded position that the date for filing return has been extended till 7.2.2020. In such circumstances, no adjudication is required on the petition.

6. This petition is disposed of however, binding the respondent Union of India to take a decision on the representation to be filed on behalf of the petitioners, within one week of its filing. The respondent would also address the issue of extending the time for 30 days, so far as filing of GST Returns in the State of Assam, Nagaland, Mizoram and Arunachal Pradesh is concerned, in view of peculiar conditions prevalent in these States.

As per Dr. Saraf, this prayer would be made in the representation.

Let copies of the order be furnished to both the sides under signatures of the Court Master.

JUDGE

CHIEF JUSTICE

Comparing Assistant