IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18515 of 2015

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City Makers Pvt. Ltd. a Private Limited Company incorporated under the Companies Act, 1956 having its office at Ground Floor, Vasudev City Opp. Raj Hans Guest House, Rajendra Path P.O. G.P.O. P.S. Gandhi Maidan, District - Patna through its Director Manoj Kumar Bharti son of Late Ram Chandra Prasad, resident of Parikarma, 4th Floor, Quality Enclave, Near Kathpul, South Mandiri, P.O. G.P.O. P.S. Buddha Colony, District - Patna.

... ... Petitioner/s

Versus

1. Central Board of Excise And Customs through its Chairman, having its office at North Block, Rashtrapati Bhawan Defence Head Quarters New Delhi.
2. Commissioner, Central Excise and Service Tax having its office at Annexe Building, Birchand Patel Path, Patna.
3. Deputy Commissioner, Service Tax Division, Patna.
4. Superintendent, Service Tax, Range - 2, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : M/s D.V. Pathy
Manju Jha, Advocates

For the Respondent/s : Mr. S.D. Sanjay (ASG)
Mr. Alok Kumar Agrawal, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-08-2018

It is not in dispute that as such, the petitioner has come against the show cause notice by which the petitioner is called upon to show cause why:-

"(i) the Service Tax including cesses Rs.3,64,596 leviable and payable should not be demanded and recovered from the noticee under Section 73(1) of chapter V of the Finance Act, 1994;

(ii) the interest at the rate applicable during the material period should not be charged under Section 75 of Chapter V the said Act on the Service Tax so demanded.

(iii) Interest on delayed payment of Service tax as detailed above, should not be charged & recovered from them under Section 75 of Chapter V of the finance Act 1994.

(iv) Penalty in terms of Section 76 of Chapter V of the Finance Act, 1994 should not be imposed upon them for non payment of service tax.

(v) Penalty under Section 77 of Chapter V of the Finance Act 1994 should not be imposed upon them for non filing of the statutory returns by due date.

(vi) Penalty under Section 78 of Chapter V of the Finance Act 1994 should not be imposed upon them for non payment of service tax by reason of suppression of facts with intent to evade payment of duty.

(vii) Late fee as provided under section 70 of Chapter V of the Finance Act 1994 read with rule 7C of the said Rules should not be recovered from them for delayed filing of the ST-3 returns."

The said show cause notice is yet to be considered by the appropriate authority after giving full opportunity to the petitioner. It is required to be noted that a detailed show cause notice (dated 17.10.2015) has been issued.

It is the case of the petitioner that the said show cause notice is issued on the basis of Circular No. 151/2/2012-S.T., dated 10.02.2012 issued by the Central Board of Excise and Customs and, therefore, the Authority, which has issued the notice, is bound by the same. Considering the show cause notice dated 23.10.2013, a detailed show cause notice has been issued and it requires consideration by the appropriate authority on facts as well as on law.

At this stage, it is required to be noted that even in the show cause notice, it is specifically observed in paragraph No. 4 that noticee is deliberately not co-operating in the investigation process and delaying the matter intentionally.

The aforesaid is disputed by learned counsel for the petitioner.

Be that as it may, as the show cause notice is yet to be considered by the appropriate authority, we refuse to entertain the present petition, keeping all the defences which may be available to the petitioner open, which would be considered by the appropriate authority in accordance with law and on merit and thereafter pass speaking order.

With the aforesaid observations, the present petition stands disposed of.

(Mukesh R. Shah, CJ)

(Dr. Ravi Ranjan, J)

Spd/-Sanjay

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.08.2018
Transmission Date	NA