IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12677 of 2021

M/s Shanti Construction and Co. PAN-ABAFS6068B, having its Principal Place of Business at Shanti Bhawan, Near Bihar Motor Works, Bahadurpur Main Road, Kankarbagh, Patna-800020 through its Partner Praveen Anand, aged about 46 Years (Male) S/o Late Satyadeo Prasad, Shanti Bhawan, Near Bihar Motor Works, Bahadurpur Main Road, Kankarbagh, P.S.-Patrakar Nagar, District-Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The State of Bihar, through the Commissioner-Cum-Principal Secretary, Commercial Tax Department, Government of Bihar, Patna.
3. The Principal Secretary, Building Construction Department, Government of Bihar, Patna.
4. The Secretary, Building Construction Department, Government of Bihar, Patna.
5. The Managing Director, Bihar State Building Corporation, Government of Bihar, Patna.
6. The Secretary Department of Revenue, Ministry of Finance, Government of India, New Delhi.
7. The Commissioner-Cum-Principal Secretary, Commercial Tax Department, Government of Bihar, Patna.
8. The Commissioner, CGST and Central Excise, Patna-1 Commissionerate, Patna.
9. The Principal Commissioner, CGST and CX, Patna-I having its Office at 3rd Floor, C.R. Building, Birchand Patel Path, Patna-800001

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Alok Kumar @ Alok Kr Shahi, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC-11

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

(The proceedings of the Court are being conducted by Hon’ble the Chief Justice/ Hon’ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

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Date : 24-01-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

i) To issue an appropriate order/direction in the nature of *Certiorari* quashing the Demand – cum – Show Cause Notice dated 15.04.2021 issued by the Respondent No. 3 demanding Service Tax aggregating to Rs. 6,06,24,604/- as the same has been issued arbitrarily and after the expiry of limitation period for issuance of Show Cause Notice;

ii) To issue an appropriate order/direction in the nature of *Mandamus* directing the Respondent Authorities not to take any coercive action against the Petitioner until the disposal of this writ petition;

iii) To any other relief or reliefs for which the Petitioners maybe found entitled to in the facts and circumstances of this case;

It is contended on behalf of the petitioner that the circular issued by the Revenue, stipulating a time frame to initiate proceedings to show cause was not adhered to, prior to issuance of Demand cum Show Cause Notice dated 15th of April, 2021 (Annexure-4 Page No. 26) by the Revenue. Further, that in terms of the said impugned notice, the Revenue has already pre-determined the amount due and payable by the petitioner.

On the second issue, we are of the considered view that the petitioner is totally misreading the Demand cum Show Cause

Notice for, as is evidently clear from Paragraph Nos. 15, 16 and 17 thereof, it is just a notice to show-cause to the petitioner, affording opportunity to explain, as to why the income of ₹6,06,24,604/- (Six crore, six lakh twenty four thousand six hundred and four only) allegedly suppressed by the petitioner, as was noticed by the Revenue in collateral proceedings, should not be assessed. It is in this backdrop petitioner is required to submit all material evidences in support of the contentions, refuting such allegations before the appropriate authority.

Dr. K.N. Singh, learned Additional Solicitor General, clarifies that the petitioner is misconstruing the term "Demand Cum Show Cause Notice" as captioned in the notice (Annexure-4). The impugned notice is just a notice to show-cause and not adjudication of any amount, which the authority necessarily has to do so after accounting for the response to be filed by the petitioner. Also, an order in that regard is necessarily required to be passed by the concerned officer in accordance with law, including assigning reason.

As such, we are of the considered view that petitioner must first respond to the show-cause notice and by taking all pleas, including the one taken before this Court. Also, petitioner shall be afforded adequate opportunity of hearing, whereafter the authority shall pass an order assigning reasons in accordance with law.

In so far as first contention is concerned, we are also of the considered view that such plea can be taken before the appropriate authority and should the appropriate authority find the circular to be mandatory in nature, obviously the Demand cum Show Cause Notice would be recalled and/or appropriate action taken in accordance with law.

As such, we dispose of the present petition in the following terms:-

(a) Petitioner is directed to appear before the appropriate authority on 7th of February, 2022 when complete response annexing all documents in support of the pleas shall be filed;

(b) The appropriate authority shall take a decision thereupon expeditiously and preferably within a period of two months thereafter;

(c) Petitioner undertakes to fully cooperate and not take any unnecessary adjournment;

(d) Needless to add, liberty reserved to the petitioner to place on record all relevant materials;

(e) The appropriate authority shall pass a reasoned and speaking order assigning reasons, after accounting for all the materials placed on record by the parties;

(f) Liberty reserved to the petitioner to take recourse to such remedies as are otherwise available in accordance with law, including filing a fresh petition before this Court on the same and subsequent cause of action;

(g) During pendency of the case, no coercive steps shall be taken against the petitioner.

(h) The Appropriate Authority shall pass a fresh order only after affording adequate opportunity to all concerned, including the writ petitioner;

(i) The authority concerned shall decide the case on merits expeditiously, preferably within a period of two months from the date of presentation of a copy of this order;

(j) The authority concerned shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

(k) We are hopeful that as and when petitioner takes recourse to such remedies, before the appropriate forum, the same shall be dealt with, in accordance with law, with a reasonable dispatch;

(l) We have not expressed any opinion on merits and all issues of fact and law are left open;

(m) Should the petitioner find the need to challenge the order which may be passed, it is always open for the petitioner to take recourse to such other remedy as is available in accordance with law, and if the order appears to be ex facie illegal, institute a fresh petition before this Court;

(n) If possible, proceedings during the time of current Pandemic [Covid-19] be conducted through digital mode;

The instant petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, stands disposed of.

Learned counsel for the respondents undertakes to communicate the order to the appropriate authority through electronic mode.

(Sanjay Karol, CJ)

(S. Kumar, J)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	27.01.2022
Transmission Date	