IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13380 of 2021

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M/S Kison (A sole proprietorship firm) having its registered office at Rajendra Nagar, Kadam Kuan, Patna- 16 through its sole proprietor Mr. Amit Kumar.

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue, having its office at Room No. 46, North Block, P.O. and P.S. North Block, New Delhi- 110001.
2. The Central Board of Indirect Taxes and Customs, through its Chairman, Ministry of Finance, Department of Revenue, having its office at North Block, P.O. and P.S. North Block, New Delhi- 110001.
3. The Additional Commissioner, CGST, Patna Central Division, Patna.
4. The Deputy Commissioner, Central GST and Central Excise, Patna Central Division.
5. The Superintendent, CGST, Kadam Kuan Range, Patna.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mrs. Archana Sinha, Advocate
Mr. Anurag Saurav, Advocate
For the Respondent/s : Mr. Dr. Krishna Nandan Singh, ASG

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

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(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. For quashing of Show Cause Notice dated 08.04.2019 issued by respondent no.3 i.e, Additional Commissioner, CGST, Patna Central Division, Patna, alleging a short payment/wilful suppression of Service Tax Amount to Rs. 90,00,970/- on the consideration received by the petitioner for the Financial Year 2013-14 to 2016-17 and the said Show Cause Notice is bad in law, as the same has been issued beyond the period of limitation prescribed under the Finance Act, 1994 and contrary to the principles settled by the Hon'ble Apex Court and Hon'ble High Court in different cases wherein it has been held that revenue cannot raise demand on the basis of difference in figures of Form 26AS and ST-3 without verification and on the basis of presumption.

ii. For restraining the respondent authorities from further proceeding with the above mentioned matter till the disposal of the present writ application.

iii. For any other relief or reliefs which may the petitioner is entitled in the eye of law.

With vehemence, it is argued that Respondent No. 3 namely the Additional Commissioner, CGST, Patna Central

Division, Patna, ignoring the Master Circular on Show Cause Notice dated 10th of March, 2017 (Annexure-2) has issued the impugned notice to show-cause dated 08.04.2019 (Annexure-1).

It is contended that such action is with pre-determined notion of adjudicating the matter against the petitioner.

We do not find such submission to be emanating from record. The apprehension expressed by the petitioner is unfounded on facts, as emanating from record.

Be that as it may, we dispose of the present writ petition in the following terms:

(a) We direct the appropriate authority to positively consider and decide the issue in accordance with law, and more so, accounting for circulars issued by the Central Board of Excise and Customs, including the one annexed along with the writ petition as Annexure-2 dated 10th of March, 2017;

(b) We are hopeful that the appropriate authority (Respondent No. 3) shall take an appropriate decision at the earliest and strictly in accordance with law;

(c) Needless to add, liberty reserved to the petitioner to place on record all relevant materials in support of his contention in response to the show-cause notice;

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

(e) 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;

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

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

(h) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(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 are left open;

(m) 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	