

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17325 of 2021

Shiv Kishor Construction Private Limited, 404 Mundeshwari Enclave
Aakashwani Road, Khajpura, Patna - 800014, GSTN ID No. -
10AARCS2829R1ZQ, through its Director namely Shiv Kishor Roy, aged
about - 43 years, Gender Male, Son of Sri Ramdeo Roy, Reesident of Said
Nagar, P.S. - Laheriasarai, District- Darbhanga.

... .. Petitioner/s

Versus

1. The Union of India through the Principal Chief Commissioner of Central Tax, Government of India, New Delhi.
2. The Principal Commissioner of Central Tax, Government of India, New Delhi.
3. The Commissioner Central Tax, Government of India, New Delhi.
4. The State of Bihar through the Principal Chief Commissioner, State Tax, Bihar, Patna.
5. The Chief Commissioner, State Tax, Bihar, Patna.
6. The Joint Commissioner, State Tax, Patna Central Circle, Patna.
7. The Deputy Commissioner, State Tax, Patna Central Circle, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ranjeet Kumar, Advocate

For the Union of India : Dr. K N Singh, A.S.G.
Mr. Anshuman Singh, Sr. SC CGST

For the State : Mr. Vivek Prasad, GP-7

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.)

Date : 12-01-2022

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



- i. For setting aside the show cause notice dated 31.12.2020 and consequential DRC 01 dated 31.12.2020 for the period April' 2019 to March' 2020 issued by the Assistant Commissioner of State Tax, Patna Central Circle, Bihar, Patna in exercise of the jurisdiction conferred under Section 73 of the Bihar Goods and Services Tax Act, 2017, whereby Tax, and penalty of Rs. 3656479.54/- was calculated and the petitioner was asked to submit reply by 30.01.2021 . The

show cause is completely without jurisdiction as same was issued without complying the mandatory provision, i.e., Section 61 of the Central/Bihar Goods and Services Tax Act, 2017.

- ii. For setting aside the order dated 09.01.2021, issued by the Assistant Commissioner, State Tax, Patna Central Circle, Patna, whereby final order has been passed under Section 73 (9) of the Central Goods and Services Tax Act, 2017 and it has been ordered to issue DRC-07 of Rs. 2486750.26/- in spite of the fact that the same authorities vide show cause notice dated 31.12.2020, directed the petitioner to submit his reply / show cause on or before 31.01.2021 but the final order was passed 09.01.2021 itself, in gross violation of principle of 'natural justice'. The order is also bad in law and completely without jurisdiction for the reason of non-compliance of mandatory requirement of Section 61 of the Central/Bihar Goods and Services Tax Act, 2017.

- iii. For setting aside consequential DRC – 07 dated 13.01.2021 issued the signature of Assistant Commission State Tax, Patna Central Circle, Bihar, Patna for the period April' 2019 to March'2020 whereby the petitioner was directed to pay Rs. 24,86,750.26 as a tax and penalty.

iv.

- v. The Petitioner further prays that after setting aside the aforementioned impugned orders, the matter be remanded back to the respondents



authorities with a direction to comply the mandatory requirement envisaged under Section 61 of the Central / Bihar Goods and Service Tax Act, 2017, as the whole disputes related to the scrutiny of return and the matter may be resolved in exercise of jurisdiction under Section 61 of the Act, as the petitioner has not at all evaded / concealed / suppressed its supply, and the difference amount of Gross supply including Patrol and Diesel and all taxes added, which are Non-GST item as per Section 9 of the Act, 2017, read with the Curious case of Non-GST Goods available on website of Taxguru.in.

- vi. For any other relief for which the petitioner may be deemed entitled to.

In view of the stand taken by the respondents in the counter affidavit and more specifically in para -5 thereof, which is reproduced as under:-

5. That it is important to mention here that clerical mistake the order dated 09.012021 and the demand Notice DRC 07 has been uploaded on the GSTN Portal with the Reference number of second proceeding which is auto picked by system due to some technical error and only due to this technical error the petitioner has filed the present writ petition without bringing the same into the knowledge of the answering respondent.

Shri Vivek Prasad, learned counsel for the Revenue fairly



states that the matter be remanded to the authorities for consideration afresh.

We notice that the statutory period enabling the petitioner to show cause was not afforded and also there was a technical error as admitted by the Revenue. Hence, the impugned orders dated 09.01.2021 (Annexure-5) and 13.01.2021 (Annexure-6) need to be quashed.

Ordered accordingly.

The petition is disposed of with further direction to the petitioner to appear before the authority concerned on 27.01.2022 at 10:30 A.M.

The petitioner shall place entire material in support of his contention within a period of two weeks thereafter.

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

(1) The concerned Authority shall decide the case on merits expeditiously, preferably within a period of three months from the date of appearance of the petitioner;

The concerned Authority shall pass a



speaking order assigning reasons, copy whereof shall be supplied to the parties;

Liberty reserved to the petitioner to challenge the order, if required and desired;

Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

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;

We have not expressed any opinion on merits and all issues are left open;

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, also 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)

Sujit/Amrendra

AFR/NAFR	
CAV DATE	
Uploading Date	14.01.2022
Transmission Date	

