IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13526 of 2022

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M/s Chinmastika Construction and Developers Private Limited through its Managing Director Praveen Prakash, Ward No. 14, Indrapuri, Behind Post Office, Gopalganj- 841428

... ... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Govt. of India, New Delhi.
2. The Secretary, Department of Revenue, Govt. of India, New Delhi.
3. The Principal Commissioner of Central Goods and Service Tax, New Delhi.
4. The Commissioner of Central G.S.T. and C. Ex., Patna- II, 3rd to 5th Floor, CTTC Building, Sanchar Parishar, Budh Marg, Patna- 800001
5. The Additional Commissioner of GST and C. Ex. Patna- II, Commissionerate 3rd to 5th Floor, CTTC Building, Sanchar Parishar, Budh Marg, Patna- 800001

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Dr. Alok Kumar Sinha, Advocate Mr. Naveen Kumar, Advocate Mrs. Raj Rashmi Sinha, Advocate
For the UOI	:	Mr. Anshuman Singh, Sr. SC, CGST

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

Date : 12-10-2022

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

That this is an application for issuance of appropriate writ/ writs, order/order, direction/ directions in the certiorari for quashing the Demand-cum Show Cause Notice No. 1572 dated 28.04.2021 (Annexure-1) issued by the office of Respondent no. 5 through which the Respondent no. 5 asked to explain as to why should not be collected an amount of Rs. 1,04,09511/- (Rupees One Crore Four Lakh Nine Thousand five hundred eleven only) for suppression of taxable service and contravention of various provision of

Finance Act 1994 for the period 20156-2016 so evaded which appears to be by way of suppression of fact, willful misstatement and contravention of the provisions of Finance Act-1994 and service Tax Rules, 1994 and section-119 of the Finance Act, 2015 Section-116 of the Finance Act 2016 with sole intent to evade payment of Service Tax appears to be recoverable under provision of section-73(i) of Finance Act 1994. Notice is also liable for separate penalty under section-78 and section077 of Finance Act 1994 read with section 174 of the Central Goods and Service Tax 2017 for willful suppression of material facts with intent to evade payment of Service Tax and contravention to the provisions of section-67 and 68 of Finance Act 1994 and with Rule-6 of Service Tax Rule 199 read with section 174 of the Central Goods and Service Tax Act, 2017.

And

Be further pleased to stay the operation of Demand cum Show Cause Notice no. 1572 dated 28.04.2021 during pendency of this writ petition.

It is the petitioner's case that the impugned demand-cum-show cause notice dated 28.04.2021(Annexure-1 Page 20) could not have been issued by the Officer, *inter alia,* for the action to be barred by limitation.

We notice that the petitioner has also responded to the show cause notice, but the issue is yet pending consideration.

After the matter was heard for some time, learned counsel for the petitioner states that the petitioner shall be content, if the petition is disposed of with the direction to the competent authority i.e. Respondent No. 5, namely, The Additional Commissioner of G.S.T. & C. Ex. Patna-II, Commisssionerate 3rd to 5th Floor, CTTC Building, Sanchar Parishar, Budh Marg, Patna-800001, to positively consider and decide the issue expeditiously, in terms of the demand-cum-show cause notice, after considering the response filed by the petitioner,.

Respondents have no objection to the same.

Learned counsel for the petitioner states that the matter is yet pending consideration.

Shri Anshuman Singh, learned counsel appearing for the respondents, states that the petitioner failed to respond to the show cause notice within the stipulated period of time.

Be that as it may, the petition is disposed of on the following mutually agreeable terms:-

(i) Petitioner shall make himself available in the office of the respondent no. 5, namely, the Additional Commissioner of G.S.T. & C. Ex. Patna-II, Commisssionerate 3rd to 5th Floor, CTTC Building, Sanchar Parishar, Budh Marg, Patna-800001 on 02.11.2022 at 10:30 A.M. along with a copy of this order;

(ii) The Assessing Authority shall decide the case on merits after complying with the principles of natural justice;

(iii) Opportunity of hearing shall be afforded to the parties to place on record all essential documents and materials, if so required and desired;

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

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

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

(vi) The Assessing Authority shall decide the case on merits expeditiously, preferably within a period of two months from the date of appearance of the petitioner;

(viii) The Assessing Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

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

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

(xi) 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;

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

(xiv) If possible, proceedings be conducted through digital mode;

The instant petition sands 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/Ashwini

AFR/NAFR	
CAV DATE	
Uploading Date	17.10.2022
Transmission Date	