IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6483 of 2024

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M/s Sukhmani Carrying Corporation a Partnership Firm having its Office at Zero Mile, New Bypass, Pahari, Patna through one of its Partner, namely, Navdeep Singh, male, aged about 39 years, Son of Sardar Kamail Singh, Resident of Bhargo Saw Mill, Mithapur, Phulwari, P.S. Jakkanpur, District-Patna.

... ... Petitioner/s

Versus

1. The Principal Commissioner Central GST and Central Excise, Patna- 1, Office of the Principal Commissioner, 3rd floor, Central Revenue Building, B.C. Patel Patha, Patna.
2. The Commissioner, Central Tax (Audit), office of Commissioner, 4th Floor, Central Revenue Building, B.C. Patel Patha, Patna.
3. The Assistant Commissioner, Central Tax (Audit), office of Commissioner, 4th Floor, Central Revenue Building, B.C. Patel Patha, Patna.
4. The Suprintendent (Adjudication), CGST and Central excise H.Q. (Adjudication) Patna - 1, 1st floor, C.R. Building, B.C. Patel Path, Patna.
5. The Suprintendent, CGST Kankarbagh Range, Office of Suprintendent Central GST and Central Excise, Ground Floor, Chandanpura Palace, Opp. Dadijee Temple, Near Biscomaun Bhavan, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.D. Sanjay, Senior Advocate Mr.Vishal Kumar, Advocate
For the Respondent/s	:	Dr. Krishna Nandan Singh (ASG) Mr. Anshuman Singh Sr. SC, CGST&CX

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

Date : 02-05-2024

The challenge in the writ petition is against the levy of service tax for the assessment year 2016-17 and the three months of 2017-18 before the GST regime came into force on 01.07.2015. No appeal has been filed and the allegation

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is of lack of jurisdiction on the ground of limitation and also on the ground of reverse charge applicable to the services provided by the petitioner.

2. Mr. S.D. Sanjay, learned Senior Counsel points out the show cause notice issued which had the date 13.10.2021 produced as Annexure-P/9. The provisions of Section 73 of the Finance Act, 1994 were pointed out to impress upon us that the notice issued was beyond the limitation period. It is further urged that the petitioner who is a transporter is exempted by virtue of the notification produced as Annexure-P/1 which implements the mechanism of reverse charge in respect of transportation of goods by road; making the payability of the service tax on the person receiving the service.

3. Learned Additional Solicitor General, however, points out that the petitioner was issued with multiple show cause notices which were not responded. The petitioner also did not participate in the hearing and there was absolutely no way by which the contention of reverse charge could have been looked into by the Assessing officer. It is pointed out that not all transportation of goods

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by road is applicable under the reverse charge mechanism as per Annexure-P/1. Section 73(1) of the Finance Act,1994 indicates that the limitation period is thirty months from the relevant date. On the ground of limitation it is submitted that if there is suppression, the limitation is five years and not thirty months as is clear from Section 73 of the Finance Act, 1994. The relevant date as per sub section (6) of Section 73 of the Finance Act, 1994 is the date prescribed for filing of returns, which is provided in Rule-7 of the Service Tax Rules, 1994. The prescribed date of filing of half yearly return is the 25th of the succeeding month which takes it up to 25th of April.

4. Insofar as the relevant date is concerned, for the year 2016-17, the thirty months period expires on 25.10.2019. The assessment for the year 2017 being of April, May and June, the half yearly return has to be filed as prescribed, on 25.10.2017, which would take the limitation to expire on 25.04.2020. If Section 73(1) of the Finance Act, 1994 is reckoned, the show cause notice issued on 13.10.2021 is beyond the period of limitation. However, as pointed out by the learned Additional Solicitor General; if

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there is suppression alleged then the limitation period is five years under the *proviso* to Section 73(1); in which event the show cause notice is within time. It is trite that the limitation is a mixed question of fact and law especially in the present case where allegedly there is an accusation of suppression which extends the period of limitation. We hence need to look into the facts also, briefly once we are exercising an extraordinary jurisdiction under Article 226 of the Constitution of India; which is discretionary and also confined to clear instances of lack of jurisdiction, an abuse of process or the like.

5. Learned Senior Counsel for the petitioner argued that it is not correct to say that the petitioner did not respond to the show cause notices. Learned Senior Counsel specifically pointed out Annexure-P/16 which enclose two communications dated 22.07.2021 and 10.09.2021 addressed to the Assessing Officer. The first of these communications produced the audited Profit & Loss account and expressed inability to provide the agreements with the principal of the assesse and undertook to file it as and when received. The communication dated 10.09.2021

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produced the agreements during the year 2016-17 and 2017-18. The agreements have not been produced before us, rightly so, since we would not look into the facts. However, at least there should be some reference to the reverse charge mechanism applicable to the transporters as provided under Annexure-P/1; we find to be totally absent.

6. Looking at Annexure-P/1 we see that reverse charge is applicable to transport agencies in respect of transportation of goods, only when the person liable to pay freight are those specified under Clauses-(a) to (f). The petitioner hence had to indicate specifically the various transactions and point out the recipients and their legal status, so as to enable the reverse charge mechanism to be operated. The petitioner had not made any such attempt and the communications in response to the show cause notices were as vague as it can be. It is also pointed out by the Additional Solicitor General that despite consultation having been initiated; the petitioner failed to appear and this also led to the assessment order being passed.

7. The impugned order has also taken into account the show cause submitted by the assessee in which a

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contention was taken with respect to the notification issued relating to reverse charge, which contention raised has been negatived based on the documents produced. The assessment order was passed on the ground that there is suppression insofar as the transactions having been not disclosed by way of filing return, on the prescribed date and it was categorically found that the show cause notice was rightly issued invoking the extended period of limitation.

8. We are unable to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India to interfere with the order passed at Annexure-P/13 and leave the petitioner with the remedy of appeal available under the statute. The impugned order at Annexure-P13 was passed on 29.02.2024 and the present writ petition was filed on 15.04.2024, within two months from the impugned order. The petitioner would be entitled to approach the appellate authority within the time provided under the statute, as computed from today, the date of disposal of the writ petition; excluding that between 29.02.2024 to 15.04.2024.

9. We make it clear that our finding is only that the question of limitation is a mixed question of fact, which is

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only a statement of the trite law. The *prima facie* observations regarding limitation need not regulate the appellate authority. The appellate authority would consider the ground of limitation as also of reverse charge raised against the order.

10. With the above liberty, the writ petition stands dismissed.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

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CAV DATE	NA
Uploading Date	
Transmission Date	NA

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