IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7676 of 2023

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Ratan Kumar Singh, a proprietory concern having its office at Ward No. 9, Radha House, Near Vyapar Mandal, Supaul, Bihar- 852131 through its proprietor Ratan kumar Singh (Male, aged about 68 years) Son Vihunadev Prasad Singh resident of Ward No. 9, Wayapar Mandal, Supaul, Bihar-852131

... ... Petitioner/s

Versus

Commissioner of CGST and Central Excise, having its office at Central Revenue Building, (Annexe), Bir Chand Patel Marg, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D.V.Pathy, Advocate
For the Respondent/s	:	Dr. K. N. Singh, ASG
		Mr. Anshuman Singh, Sr. SC, CGST& CX
		Mr. Shivaditya Dhari Sinha, JC to ASG
		Mr. Devansh Shankar Singh, JC to ASG

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
Date : 24-04-2024

The petitioner is concerned with Assessment Years 2015-16 and 2016-17. The petitioner is a works contractor who is said to be engaged in construction of roads, bridges etc. used by the public and the works contract were those awarded by the State. Annexure-1 is a reminder to the earlier show cause notice issued which was followed up with Annexure-2 order dated 15.02.2023.

2. The petitioner’s contention is that before the order was passed there was no pre-consultation. The petitioner relies on Anneuxre P-7, the Master Circular on Show Cause Notice,

Adjudication and Recovery dated 10.03.2017 issued by the Central Board of Excise and Customs. Reliance is placed on paragraph 5.0 where there is prescription of consultation with the assessee before issuance of show cause notice. The petitioner contends that there was no consultation as required by the Central Board of Excise and Customs, carried out in the above matter.

3. As far as the exemption is concerned, the petitioner relies on Annexure-3 produced in the writ petition wherein paragraph-13 are services provided by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation or alteration of a road, bridge, tunnel, or terminal for road transportation for use by general public, which have been exempted.

4. The petitioner also relies on Annexure P-9, a judgment of the Division Bench of the Delhi High Court in Amadeus India Pvt. Ltd. Vs. Principal Commissioner, Central Excise, Service Tax and Central Tax Commissionerate.

5. By the aforesaid judgment, the Division Bench of the Hon'ble High Court of Delhi without expressing any view on the merits of the case relegated the parties to the stage prior to the issuance of the impugned show cause notice so as to carry

out the consultation as prescribed by the Central Board of Excise and Customs. A Special Leave Petition (Civil) Diary No(s). 35886 of 2019 taken to the Hon'ble Supreme Court also was admitted but with the following order:

> *"Delay condoned.*
>
> *Learned Additional Solicitor General submits that if a fresh show cause notice is to be issued as directed by the High Court after pre-consultation, the Department may be given liberty to revive the earlier show cause notice to obviate any objection in regard to limitation.*
>
> *Issue notice confined to the above issue, returnable in eight weeks."*

6. The matter is pending before the Hon'ble Supreme Court but however the Hon'ble Supreme Court was also of the opinion that the proceedings should be completed by relegating the parties to the stage at which the consultation has to be carried out. It has also been specified that after consultation, a show cause notice could be issued. Any limitation as per the statute will not restrict the Department from issuing such a show cause notice.

7. We hence adopt the very same method and relegate the parties to the consultation stage. We make it clear that we have not made any observation on the merits of the matter

including the issue of exemption prayed for by the petitioner, which will have to be considered on the terms of the notification issued as also the facts coming out insofar as the contracts executed by the petitioner-assessee.

8. The writ petition stands allowed on the above terms making it clear that if after consultation a show cause notice is required to be issued, the issue of limitation will not impair such issuance.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

Anjani/-

AFR/NAFR	
CAV DATE	
Uploading Date	24.04.2024
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