IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19564 of 2021

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M/s Krishangi Construction Pvt. Ltd. having its principal place of business at 402, North Mangalam Vihar Colony, near Saguna More, P.O. and P.S.- Danapur, Patna- 801503 through its Managing Director Dhiraj Kumar, male, aged about 47 years, Son of Mohan Murari Singh, Resident of 402, Bindhyakunj Apartment, North Mangalam Vihar Colony, Wali Dinapur cum Khagaul, Patna- 801503.

... ... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The State of Bihar through the Commissioner-cum-Principal Secretary, Rural Work Department, Government of Bihar, Patna.
3. The Secretary, Department of Revenue, Ministry of Finance, Government of India, New Delhi.
4. The Commissioner-cum-Principal Secretary, Commercial Tax Department, Government of Bihar, Patna.
5. The Commissioner, CGST and Central Excise, Patna-1 Commissionerate, Patna.
6. The Joint Commissioner, Central GST and Central Excise (H), Patna-1 having its office at 3rd Floor, C.R. Building, Birchand Patel Path, Patna- 800001.
7. The Principal Commissioner, CGST and CX, Patna-1 having its office at 3rd Floor, C.R. Building, Birchand Patel Path, Patna- 800001.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mrs. Archana Sinha, Advocate
For the Respondent/s : Dr. K.N. Singh, ASG
Mr. Anshuman Singh, Sr. SC, CGST & CX
Mr. Shivaditya Dhari Sinha, JC to ASG

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-01-2024

The petitioner is before us challenging Annexure-4 demand-cum- show-cause notice issued under the Finance Act, 1994 dated 24.10.2021. Normally, we would have not entertained the challenge against the show-cause notice and directed the petitioner to approach the authority and give proper show-cause. However, in the present case, the specific contention of the petitioner is that the pre-consultation as mandated by the CBDT circulars was not carried out in the proper manner. Annexure-1 is referred to which is a pre-consultation show-cause notice dated 17.10.2021. Specifically, Paragraph 3 is pointed out, which is extracted herein below:

> *In view of the above, the Joint Commissioner, Central GST & Central Excise Commissionerate, Patna-1 having his office at C.R. Building(Annexe), B.C. Patel Path, Patna-800001 has been pleased to give you the opportunity for pre-notice consultation on 18.10.2021 at 11:15:00 AM in his chamber. If you wish to be consulted on Virtual Mode the same may be informed to the undersigned for sharing link of WEBEX platform.*

2. The petitioner also has a contention which has been specifically stated on affidavit that in response to the aforesaid letter on 17.10.2021, the petitioner approached the office of the 6th respondent, but he was not present there. An Inspector was present who refused to accept the reply to be given. There is no specific denial of the aforesaid averments made on affidavit, in the counter affidavit.

3. Further, it is to be noticed that the pre-consultation notice issued on 17.10.2021 gave only one day's notice i.e., on 18.10.2021. It is also pertinent that the pre-consultation notice also speaks of the petitioner being permitted to seek for consultation on virtual mode for which also there would obviously be no time, when the date fixed was on the very next day.

4. The learned ASG, who appears on behalf of the respondents submits that this is a fit case where pre-consultation was not required, especially since the total evaded amount is above Rs. 50,00,000/- and the allegation is with respect to concealment/ evasion.

5. We are not ready to countenance the argument so raised by the learned ASG, especially when a pre-consultation show-cause notice was issued by the authorities.

6. We hence, set aside the show-cause notice, not on merits, but only on no proper opportunity having been given to the petitioner for reply and consultation. In such circumstances, the show-cause notice at Annexure-4 will stand set aside. The petitioner is directed to file a detailed reply to the pre-consultation notice within a period of three weeks from today. The petitioner will also appear before the authority on

06.02.2024 on which date or any other date fixed, the petitioner shall also be heard either on virtual mode or on the physical mode as requested by the petitioner. We make it clear that we have not made any observation on the merits of the matter.

7. The writ petition stands allowed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	13.01.2024
Transmission Date	