IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17333 of 2023

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Rana Construction a proprietory concern having its office at Mrityunjay Bharti, H. No. -54, Girija Kunj, Saraswati Lane, East Lohanipur, Patna-800003, Bihar through its proprietor Mrityunjay Bharti (Male, aged about 44 years) son Shri Ram Bhawan Prasad, resident of Girija Kunj, Lohanipur, Kadamkuan, Phulwari, District Patna, Bihar-800003.

... ... Petitioner/s

Versus

1. Commissioner of CGST and Central Excise having its office at Central Revenue Building (Annexe), Bir Chand Patel Marg, Patna.
2. Addl. Commissioner of CGST and Central Excise, Patna-1 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. Devansh Shankar Singh, Advocate
Mr. Prabhat Kumar Singh, JC to ASG
Mr. Shivaditya Dhari Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

8 29-07-2024 The petitioner is concerned with assessment year 2013-14 to 2016-17 in which a demand-cum-show cause notice was issued under the Finance Act, 1994 as produced at Annexure-3 dated 28.03.2019. The petitioner relies on the Master Circular dated 10.03.2017 produced at Annexure-12 series wherein Clause 5.0 mandated a consultation with the noticee before issue of show cause notice, in cases involving demands of duty above Rs.50 lacs except for preventive/offence

related show cause notices. Admittedly, no consultation was carried out before the issuance of show cause notice.

2. The learned ASG however points out that the circular issued by the Central Board of Indirect Taxes and Customs on 11.11.2021 makes it clear that in cases *inter alia* of suppression of facts, there is no mandate for a consultation prior to the demand-cum-show cause notice.

3. The learned counsel for the petitioner points out that the clarification came only on 11.11.2021 and the show cause notice was dated 28.03.2019. Further, it is submitted that in the case of the petitioner there cannot be found suppression especially since the petitioner was engaged in the construction of roads and bridges, a public utility service, which is exempted by notification no.25 of 2012 produced as Annexure-6 at page 52. The learned counsel for the petitioner also relied on ***Pushpam Pharmaceuticals Company vs. Collector of Central Excise, Bombay, (1995) supplementary 3 SCC 462***.

4. We cannot but notice that even the earlier circular of 2017 excluded preventive/offences from the mandatory consultation. Hence, the fact that the clarification issued on 11.11.2021 would have application even prior. If there is suppression of facts, we are of the opinion that there need not be

any consultation even if the total tax liability exceeds Rs.50 lacs.

5. However, it is to be noticed that the petitioner's contention is of a total exemption based on a notification issued by the Central Government. In that circumstances, considering the cited decision even if the return has not been filed, it is doubtful as to whether there could be alleged suppression of facts.

6. In this context, we notice the order in a Special Leave Petition (Civil) Diary No(s).35886 of 2019 which arose from the judgment of a Division Bench of the Delhi High Court wherein the Hon'ble Supreme Court held so:

> *"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."*

7. 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.

8. 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.

9. 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)

(Partha Sarthy, J)

Saurabh/-

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