IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9126 of 2024

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M/s Singh NICC (J.V) through its Manager Mr. Anil Kalra, (Aged about 40 years), Resident of 1358, Urban Estate Phase-2, Patiala, Patiala, Punjab-147002

... ... Petitioner

Versus

1. The Union of India through its Principal Chief Commissioner of Central Excise and Service Tax, B.C. Patel Path, Patna-1
2. Superintendent, Central GST and Central Excise, Gandhi Maidan range, B.C. Patel Path, Patna.
3. Superintendent, Central GST and Central GST Division Patiala-I, Range-I, Urban Estate, Phase-III, Near Radio Station, Patiala.

... ... Respondents

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Appearance :

For the Petitioner	:	Ms. Archana Sinha @ Archana Shahi, Sr. Advocate
For the CGST and CX	:	Mr. Dr. K.N. Singh, Additional Solicitor General
		Mr. Anshuman Singh, Senior Standing Counsel
		Mr. Amarjeet, Advocate
		Mr. Abhijeet Gautam, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

9 17-03-2025 Heard Ms. Archana Sinha, learned Senior Counsel for the petitioner and Dr. K.N. Singh, learned Additional Solicitor General assisted by Mr. Anshuman Singh, learned Senior Standing Counsel for the Central GST and CX.

2. This writ application has been preferred seeking the following reliefs:-

> "(i) To issue an appropriate order/direction in the nature of certiorari for quashing of order dated 20.03.2024 passed by Respondent No. 1 by which he has confirmed the demand of service tax

including Cess of Rs. 3,62,13,951/- for the period 2016-17 and 2017-18 (up to June 2017) **under Section 73(1)** of the Finance Act 1994 and order for recovery of the same from the petitioner under section 73(2) of the Act ibid read with section 174 of the CGST Act 2017. As, the petitioner is providing services by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of **roads & bridges for use by general public which are exempt from Service tax** according to Sub clause "a" of clause 13 of Mega exemption notification no. 25/2012 dated 20.06.2012 of the Govt. of India.

(ii) For setting aside the demand of interest on the amount of service tax confirmed under section 75 of Finance Act read with section 174 of CGST Act 2017 for delayed payment of service tax.

(iii) For setting aside the penalty of Rs.3,62,13,951 on the petitioner under section 78 of the Finance Act, 1994 read with section 174 of CGST Act 2017 for non-payment of service tax by reason of suppression of fact.

(iv) For setting aside the penalty of Rs.10,000/- under section 77(1)(a) of the Finance Act 1994 read with section 174 of CGST Act 2017 for failure to get the registration under service tax.

(v) For setting aside the penalty of Rs.10,000/- under section 77(1)(c) of the Finance Act 1994 read with section 174 of

CGST Act 2017 for failure to produce documents called for by the respondents.

(vi) To issue an appropriate order/direction in the nature of mandamus directing the respondent's authority not to take any course of action against the petitioner until the disposal of this writ petition.

(vii) To issue an appropriate order/direction in nature of certiorari for quashing a demand notice of Rs.4,12,27,144/- which was issued on 12.10.2021 by the Respondent No. 1.

(viii) To any other relief for release for which the petitioner may be found entitled to in the facts and circumstances of the case during its hearing."

3. After hearing learned counsel for the parties, this Court finds that the writ application is fit to be allowed on a short ground.

4. It appears that pursuant to the demand-cum-show cause notice issued on 12.10.2021 by the respondent authority, the petitioner visited Patna Office on 12.11.2021, met with Mr. Santosh Kumar, Superintendent, CGST and handed over his reply against the show cause notice dated 12.10.2021. Mr. Santosh Kumar, as claimed by the petitioner, refused to accept the hard copy and directed the petitioner to file the same through e-mail at *commr-cexpatna@nic.in*. The petitioner has categorically stated in paragraph '10' of the writ application these facts and has while enclosing a copy of the various documents made a statement that the petitioner filed his reply through e-mail on 12.11.2021. In paragraph ‘11’ of the writ application, once again, the petitioner has made a statement that on the direction of Mr. Santosh Kumar, he had sent an e-mail on the official website of CGST on 12.11.2021 annexing all the relevant documents in reply of show cause notice dated 12.10.2021. Annexure ‘P/5’ to the writ application is a photocopy of the e-mail said to have been sent by the petitioner on the official website of the CGST.

5. We find from the pleadings available on the record that paragraphs ‘9’, ‘10’ and ‘11’ of the writ application have not been denied by the Respondents. All that is stated in paragraph ‘5’ of the counter affidavit is as under:-

> “5. That the statements made in Paragraph Nos. 3, 4, 5, 8, 9, 10, 11, 13, 15, 21, 22, 23 and 25 of the Writ Petition require no comments.”

6. Learned counsel for the petitioner has placed before us the impugned order as contained in Annexure ‘P/8’ to the writ application. Attention of this Court has been drawn towards paragraph ‘2.0’ wherein the Commissioner, CGST, Audit who has passed the impugned order made the following observation:-

> "2.0 Defense Reply:
> The Noticee have not submitted any defense reply against the charges alleged in the impugned Show Cause Notice dated 12.10.2021."

7. Referring to the aforesaid paragraph '2.0' of the impugned order, learned Senior Counsel for the petitioner has vehemently submitted that the reply submitted by the petitioner as contained in Annexures 'P/4' and 'P/5' have not at all been considered. This has resulted in jurisdictional error and the impugned order suffers from legal infirmities as it has been passed without consideration of the materials available on the record.

8. Dr. K.N. Singh, learned ASG has though made all out efforts to submit that the petitioner did not co-operate in course of investigation and the hearing of the matter, nonetheless, it is not denied that what have been observed in paragraph '2.0' of the impugned order cannot be defended. In fact, there is no denial of the statements made in paragraphs '9' and '10' of the writ application.

9. Having regard to the submissions noted hereinabove and the materials which we have gone into, we are of the considered opinion that the impugned order as contained in Annexure 'P/8' suffers from violation of principles of natural justice. The reply submitted by the petitioner seems to have been forgotten and not considered by the competent authority while passing the impugned order as contained in Annexure ‘P/8’.

10. We, therefore, set aside the impugned order (Annexure ‘P/8’) on this ground alone and remit the matter back to the competent authority who will consider the reply submitted by the petitioner, give an opportunity of hearing and shall pass a fresh order in accordance with law. All contentions are left open to the parties.

11. This writ application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

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