IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9317 of 2024

M/s Surya CEF JV, having its site office at Arya Nalanda Colony, Khajpura, Patna- 800014, through its authorized representative Nitish Kumar Singh, aged about 32 years, Male, Son of Shrinivas singh, resident of Gram- Nonar, P.O.- Chhewari, Nonar, P.S.-Ramgarh District- Kaimur (Bhabua), Bihar-821110.

... ... Petitioner

Versus

1. The Chief Commissioner, CGST and Central Excise, Ranchi Zone, Patna, 3rd Floor, Central Revenue (Annex) Building, Bir Chand Patel Path, Patna, PIN-800001.
2. The Principal Commissioner, CGST and Central Excise, Patna-I Commissionerate, 1st Floor, Central Revenue (Annex) Building, Bir Chand Patel Path, Patna, PIN- 800001.
3. The Commissioner, Central Tax (Audit), 4th Floor, Central Revenue (Annex) Building, Bir Chand Patel Path, Patna, PIN- 800001.
4. The Superintendent, CGST and Central Excise Range, Phulwarisharif.

... ... Respondents

Appearance :

For the Petitioner/s	:	Mr. Chitta Ranjan Das, Advocate
		Ms. Smriti Singh, Advocate
		Mr. Samir Kumar, Advocate
		Ms. Sippy Sinha, Advocate
For the Respondent/s	:	Mr. Anshuman Singh, Senior SC

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 15-04-2025

Heard Mr. Chitta Ranjan Das, learned counsel assisted by Ms. Smriti Singh, learned counsel for the petitioner and Mr. Anshuman Singh, learned Senior Standing Counsel for the CGST and CX.

2. This writ application has been filed for the following reliefs:-

"(i) For issuance of appropriate writ in the nature of certiorari or any other appropriate writ, order or direction to set aside/quash the demand of Service Tax of Rs.3,54,59,160/- under proviso to Section 73(1) of the Finance Act, 1994 along with levy of interest under Section 75 and equal amount of penalty under Section 78 and further penalty of Rs.10,000/- each under Section 77(1)(a), 77(1)(c) and 77(2) of the Act arises out of the Order No. 17/ST/Commissioner/2023-24 dated 29.02.2024.

(ii) For issuance of appropriate writ to the effect that order passed demanding tax, interest and penalty is violative of principles of natural justice and contrary to Section 83 of the Finance Act, 1994 read with Section 33A of the Central Excise Act, 1944 and C.B.E.&C. Circular No. 1053/02/2017-CX dated 10.03.2017 by not extending third opportunity of personal hearing.

(iii) For issuance of appropriate writ to the effect that receipt of income from design, construction, supply, testing and commissioning of pipe water supply scheme with electric-driven pump and suitable treatment plant in fluoride effective habitants of Jamui district on turnkey basis is exempted from the Service Tax under Serial No. 12(e) of the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012.

(iv) For issuance of a direction to stay the operation of the impugned Order No. 17/ST/Commissioner/2023-24 dated

> 29.02.2024 during the pendency of the writ application.
>
> (v) For such other relief(s), direction(s) to which the petitioner may be entitled to in the facts and circumstances of this case."

3. The petitioner is aggrieved by and dissatisfied with the order dated 29.02.2024 passed by the Commissioner, Central Goods and Services and Central Excise (Audit), Patna (Respondent No. 3) vide Order No. 17/ST/Commissioner/2023-24 as contained in Annexure-P4 to the writ application.

4. By Annexure-P4, the Commissioner, CGST and CX (Respondent No. 3) has been pleased to hold and declare that the petitioner is liable to pay service tax amounting to Rs.3,54,59,160/-. Respondent No. 3 has further held the petitioner liable to pay penalty under Section 78 of the Finance Act, 1994 (hereinafter referred to as the 'Act of 1994') and interest under Section 75 of the Act of 1994. Accordingly, Respondent No. 3 has directed the petitioner to pay interest as well as penalty. The operative part of the order (Annexure-P4) reads as under:-

> "5. In view of the above discussions and findings, I pass the following orders:
>
> **<u>Order</u>**
>
> (i) I hereby confirm the demand of Service Tax amounting to Rs.3,54,59,160/- (Rupees Three Crores Fifty Four Lakhs Fifty Nine Thousand One Hundred and Sixty only) (Inclusive of all

Cesses) against the noticee under the proviso to Section 73(1) of the Finance Act, 1994 and order for recovery of the same from the noticee under Section 73(2) of the Act ibid read with Section 174 of CGST Act, 2017;

(ii) I also confirm the demand of interest on the amount of Service Tax confirmed at Sl. No.. 5(i) above at the prescribed rate under the provisions of Section 75 of the Act, as amended, read with Section 174 of CGST Act, 2017;

(iii) I also impose a penalty of Rs.3,54,59,160/- (Rupees Three Crores Fifty Four Lakhs Fifty Nine Thousand One Hundred and Sixty only) upon the noticee under Section 78 of the Act, as amended, read with Section 174 of CGST Act, 2017;

(iv) I also impose penalty of Rs.10,000/- (Rupees Ten Thousand only) under Section 77(1)(a) of the Act read with Section 174 of the CGST Act, 2017;

(v) I impose penalty of Rs.10,000/- (Rupees Ten Thousand only) under Section 77(1)(c) of the Act read with Section 174 of the CGST Act, 2017; and

(vi) I also impose penalty of Rs.10,000/- (Rupees Ten Thousand only) upon the Noticee under Section 77(2) of the Act read with Section 174 of the CGST Act, 2017;"

Submissions on behalf of the Petitioner

5. Learned counsel for the petitioner submits that the petitioner has been engaged under an agreement dated 30.11.2016 executed by the Executive Engineer, Public Health Division, Jamui to execute, design, construction, supply, testing and commissioning of 100 pipe water supply schemes with electric driven pump and suitable treatment plants in fluoride affected habitations of Jamui District on turnkey basis with three months of trial run after commissioning and comprehensive O&M of sixty months after successful completion of trial run period, for an amount of Rs.41,87,94,900/-. A copy of the agreement dated 30.11.2016 along with issue of notice to proceed with the work, approval letter, item wise cost break up, press notice and bidding document for the work have been brought on record as Annexure-P1 Series.

6. Learned counsel for the petitioner submits that another agreement was executed on 24.04.2017 to execute, design, construction, supply, testing commissioning of Piped Water Supply Schemes with electric powered pump and suitable treatment plants for removal of excess fluoride in the fluoride affected habitation of Jamui District of Bihar on turnkey basis with three months trial run after commissioning and comprehensive operation and maintenance of sixty months after successful completion of trial run period (in different blocks of Jamui District), (Group- 'B') for an amount of Rs.42,80,70,000/-. Copy of this agreement and other documents in support thereof have been enclosed as Annexure-P2 Series.

7. By relying upon Notification No. 25/2012-S.T. dated 20.06.2012 (Annexure-P3), learned counsel submits that the services which are being rendered by the petitioner would be falling in the category of exempted services under Entry Serial No. 12(e) of the notification which is popularly called 'Mega Exemption Notification'. It is, thus, his submission that for these services, no service tax would have been payable.

8. Learned counsel submits that the agreements (Annexures-P1 and P2) were executed during the period 2016-17 and 2017-18. The Respondent No. 2 issued a show cause notice on 13.10.2021 alleging that the Company is engaged in providing taxable services as defined under Section 65B(51) of the Act of 1994 read with Section 65B(44) of the said Act to its various clients in lieu of consideration for money but have willfully escaped the assessment of taxable value by resorting to suppression with intention to evade the payment of service tax including Krishi Kalyan Cess and Swachh Bharat Cess total amounting to Rs.3,54,59,160/- for the period April, 2016-June, 2017. The Respondent No. 3 was of the view that the amount would be recoverable from the petitioner company along with interest under the first proviso of Section 73(1) and Section 75 of the Act of 1994. Accordingly, the demand-cum-show cause notice was issued.

9. Learned counsel submits that even as no defence reply could be filed by the petitioner pursuant to the show cause notice, the Respondent No. 3 remained sitting over the matter and no action whatsoever was taken for about two and half years. The date of personal hearing was fixed calling upon the petitioner to appear on 11.01.2024. In response to the notice of personal hearing, a representative of the petitioner appeared and requested for time on the ground that the matters under consideration were being managed by those employees of the petitioner company who were no longer associated with the company, hence, the petitioner company would require some time to come back and produce the relevant documents.

10. It is submitted that the discussions which took place on 14.02.2024 have been mentioned in the first part of paragraph '3.2' of the impugned order (Annexure-P4) and from this part of the order, it would appear that second date of hearing was fixed on 14.02.2024 but thereafter, no further date was fixed by Respondent No. 3. In the later part of paragraph '3.2', Respondent No. 3 has stated that the representative of the petitioner was explicitly asked to provide substantiating documentation supporting the assertions made by the noticee but even after 15 days, the noticee had failed to submit any documents in support of his claim. In fact, the representative of the petitioner company had informed Respondent No. 3 about the nature of the company's operations. It was brought to the notice of Respondent No. 3 that the company is focusing on water treatment and solar energy projects, therefore, this fact was well within the notice of Respondent No. 3.

11. It is submitted that on the 15th day from 14.02.2024, the impugned order (Annexure-P4) has been passed.

12. Learned counsel submits that on perusal of Section 83 of the Act of 1994, it would appear that some of the provisions of the Central Excise Act, 1944 have been made applicable in relation to the service tax as they apply in relation to a duty of excise. Section 33A of the Central Excise Act, 1944 is one of the sections which has been made applicable in relation to the matters under the Act of 1994. Section 33A lays down the adjudication procedure and a reading of the same would show that it gives emphasis upon an opportunity of hearing to the party and for this reason, the proviso to sub-section (2) of Section 33A restricts that the adjournment shall not be granted for more than three times to a party during the proceeding. Keeping this adjudication procedure in mind, the Government of India through its Ministry of Finance (Department of Revenue), Central Board of Excise and Customs, New Delhi has issued a master circular on show cause notice, adjudication and recovery proceedings vide Circular No. 1053/2/2017-CX dated 10.03.2017. It is pointed out that under paragraph '14.3' of the master circular (Annexure-5), it is recorded that at least three opportunities of personal hearing should be given with sufficient interval of time so that the noticee may avail the opportunity of being heard. Separate communication should be given to the noticee for each opportunity of personal hearing. It is also stated that in fact, separate letter for each hearing/extension should be issued at sufficient interval.

13. Learned counsel submits that Respondent No. 3 has not followed the mandate of the master circular and has not provided three opportunities of personal hearing. This would result in violation of principles of natural justice as embodied under paragraph '14.2' of the master circular.

14. Learned counsel further submits that it is not a case of fraudulent or willful suppression or evasion of tax, therefore, the benefit of extended period of limitation under proviso to sub-section (1) of Section 73 of the Act of 1994 would not be available to Respondent No. 3.

15. Learned counsel further submits that the impugned order (Annexure-P4) has been passed much after the expiry of the period of limitation as provided under sub-section (4B) of Section 73 of the Act of 1994. Relying upon a judgment of the Hon'ble Division Bench of Delhi High Court in the case of **Shyam Indus Power Solutions Private Limited Vs. Principal Commissioner CGST, Delhi North** reported in **(2025) 29 Centax 94 (Del.)**, learned counsel submits that in the said case, the Hon'ble Division Bench has referred to the previous case laws on the subject and has held in unequivocal words that the matters having financial liabilities or penal consequences cannot be kept unresolved for years and the phrase "where it is possible to do so" cannot be a license to keep matters pending for years. The flexibility provided by the legislation is not meant to be misused or construed as sanctioning indolence. The statutory lethargy cannot be brought into play routinely and in an unfettered manner for years, without any due justification or explanation.

16. It is submitted that in this case, even as the show cause notice was issued on 13.10.2021, the first date of hearing was 11.01.2024 i.e. after more than two and half years. This is an inordinate delay without there being any plausible reason and at least on record, nothing has been brought to demonstrate that it was not possible for Respondent No. 3 to determine the liability of the petitioner within the prescribed period of one year under Clause (b) of sub-section (4B) of Section 73 of the Act of 1994.

17. On these grounds, prayer has been made to set aside the impugned order.

Submissions on behalf of the Respondents

18. Mr. Anshuman Singh, learned Senior Standing Counsel for the CGST and CX has relied upon the stand taken in the counter affidavit. It is his submission that sufficient opportunity of hearing has been given to the petitioner. His representative was given opportunity to produce the relevant documents to support his contention that the service in question would be falling under exempted category under Serial No. 12(e) of the 'Mega Exemption Notification' but despite the opportunity given to the representative of the petitioner company when he failed to produce any document, the Respondent No. 3 was constrained to take a view that the activities of the petitioner are not falling under the negative list and they are not eligible for any exemption.

19. Respondent No. 3 has taken a view that the petitioner is required to discharge service tax liability of 100 percent taxable value without any abatement. It is submitted that principles of natural justice cannot be put in a straight-jacket formula and in the present case, the petitioner is not correct in alleging that there is a violation of principles of natural justice.

20. As regards the plea of the petitioner that the case would not fall in any of the categories mentioned under proviso to sub-section (1) of Section 73 of the Act of 1994, learned Senior Standing Counsel submits that the fact that the petitioner company had not taken any registration in accordance with law under the Service Tax and had not produced the documents showing that the petitioner company was engaged in carrying on the business which would be falling in the exempted category, the Respondent No. 3 is fully justified in taking a view that it is a case of fraud/willful suppression and evasion of tax in violation of the statutory provisions.

21. Learned Senior Standing Counsel would further submit that so far as the determination of liability in terms of sub-section (4B) of Section 73 of the Act of 1994 is concerned, the words occurring thereunder “wherever it is possible to do so” makes it very clear that this provision is not mandatory and every case has to be dealt in its own facts and circumstances. In the present case, the Chief Commissioner, CGST and CX accorded approval for transfer of 34 cases including the present case to the

Commissioner, CGST and CX, Audit Commissionerate, Patna for adjudication vide Letter C.No. v(8)1-CCO/Patna/Stt./Adj. 17-18/Pat-1/12494-99 dated 18.09.2023. Within five and half months thereafter, the impugned order has been passed by the Respondent No. 3. It is submitted that considering that the show cause notice was issued on 13.10.2021 which was the Corona period, the delay in determination of the liability cannot be taken to have given a right to the petitioner to assail the impugned order on this ground.

Consideration

22. We have heard learned counsel for the petitioner as well as learned Senior Standing Counsel for the CGST and CX. Since we are of the view that this writ application is fit to be allowed on the very first ground taken by learned counsel for the petitioner i.e., the ground of violation of principles of natural justice, the other issues raised by learned counsel for the petitioner are not required to be discussed and adjudicated upon for the present in this writ application.

23. On the point of violation of principles of natural justice, this Court finds that the petitioner has made out a case. The facts reveal that the show cause notice was issued on 13.10.2021, no defence reply was filed but then for two and half years nothing happened in the proceeding. For the first time, a date was fixed on

11.01.2024 for personal hearing. On this date, the petitioner submitted a letter requesting a deferment which was accepted by Respondent No. 3 and a date of hearing was fixed on 14.02.2024. Admittedly, on 14.02.2024, the representative of the petitioner appeared. The nature of the company's operations was explained to Respondent No. 3 and at the same time, it was informed that the matters under consideration were previously managed by a team of employees who were no longer associated with the company. The impugned order (Annexure-P4) nowhere records that the Respondent No. 3 fixed a further date giving an opportunity to the petitioner company to appear with the documents and make its submissions. All that is stated in the impugned order in paragraph '3.2' is that the representative of the petitioner was explicitly asked to provide substantiating documentation supporting the assertions made by the noticee. However, as of the present moment, even after 15 days, the noticee has failed to submit any documents in support of his claim. Thus, it appears that when the hearing took place on 14.02.2024, no specific date was fixed by Respondent No. 3 giving an occasion to the petitioner company to know the actual date of the next hearing.

24. At this stage, this Court finds that by virtue of Section 83 of the Act of 1994, Section 33A of the Central Excise

Act, 1944 would be applicable in relation to the adjudication procedures which were adopted by Respondent No. 3. Section 33A of the Central Excise Act, 1944 reads as under:-

> "[1][33A. Adjudication procedure.—(1) The Adjudicating authority shall, in any proceeding under this Chapter or any other provision of this Act, give an opportunity of being heard to a party in a proceeding, if the party so desires.
> (2) The Adjudicating authority may, if sufficient cause is shown, at any stage of proceeding referred to in sub-section (1), grant time, from time to time, to the parties or any of them and adjourn the hearing for reasons to be recorded in writing:
> Provided that no such adjournment shall be granted more than three times to a party during the proceeding.]"

25. The spirit of Section 33A may be found in paragraph '14.3' of the master circular no. 1053/2/2017-CX dated 10.03.2017 (Annexure-P5). Paragraph '14.3' reads as under:-

> 14.3 **Personal hearing** : After having given a fair opportunity to the noticee for replying to the show cause notice, the adjudicating authority may proceed to fix a date and time for personal hearing in the case and request the assessee to appear before him for a personal hearing by himself or through an authorised representative. At least three opportunities of personal hearing should be given with sufficient interval of time

1. Inserted by Act 23 of 2004, S.81 (w.ef. 10-9-2004).

> so that the noticee may avail opportunity of being heard. Separate communications should be made to the noticee for each opportunity of personal hearing. In fact separate letter for each hearing/extension should be issued at sufficient interval. The Adjudicating authority may, if sufficient case is shown, at any stage of proceeding adjourn the hearing for reasons to be recorded in writing. However, no such adjournment shall be granted more than three times to a noticee."

26. Further, paragraph '14.4' of the master circular mandates that the adjudicating authority must maintain a record of personal hearing and written submission made during the personal hearing. Evidence of personal hearing and written submission on record, would be very important while adjudicating the case. A combined reading of paragraph '14.3' and '14.4' of the master circular leaves no room to contest that Respondent No. 3 may deviate from these provisions of the master circular but in the present case, we find that Respondent No. 3 has not followed the mandate of granting at least three opportunities of personal hearing to the petitioner company.

27. In our considered opinion, the statutory requirement as envisaged under Section 33A of the Central Excise Act, 1944 read with paragraph '14.3' of the master circular has not been complied with.

28. In result, the impugned order is liable to be set aside on this ground alone. We, therefore, set aside the impugned order (Annexure-P4). The matter is remitted to the Respondent No. 3 for fixing a date of hearing giving at least four weeks' time to the petitioner to produce the documents and submit a written submission in support of its contention.

29. The petitioner must co-operate in conclusion of the proceeding as early as possible. The Respondent No. 3 shall pass a fresh reasoned order considering all aspects of the matter which would be brought to his notice by the petitioner within a period of two months from the date of receipt/production of a copy of this order.

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

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

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CAV DATE	
Uploading Date	19.04.2025
Transmission Date	