IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13141 of 2024

---

1. M/S Ravindra Kumar a partnership firm constituted under Indian Partnership Act having its Office at - Nasriganj, Junaidpur, Digha, Danapur through its partner Ravindra Kumar, gender- Male, Age about 51 years, son of - Baleshwar Rai, Resident of - 160, Nasriganj, Junaidpur, Post- Digha, Danapur, District - Patna - 800012.
2. Ravindra Kumar, Son of Baleshwar Rai, Resident of- 160, Nasriganj, Junaidpur, Post - Digha, Danapur, District - Patna - 800012.

... ... Petitioners

Versus

1. The Union of India through Principal Commissioner, Central GST and Central Excise, Commissionerate, Patna 1, Office of the Principal Commissioner, 3rd floor, Central Revenue Building (Annexe), Birchand Patel Patha, Patna - 1.
2. The Commissioner, Central Tax (Audit), Office of Commissioner, 4th floor, Central Revenue Building, Birchand Patel Path, Patna - 1.
3. The Assistant Commissioner, Central GST and Central Excise, Audit Commissionerate, Patna, Central Revenue Building, Birchand Patel Path, Patna - 1.
4. The Superintendent, Centra Goods and Service Tax, Danapur Range, Patna.

... ... Respondents

Appearance :

For the Petitioner/s	:	Mr. Krishna Mohan Mishra, Advocate Mr. Prasoon Kumar, Advocate
For the Respondent/s	:	Mr. Dr. K.N. Singh, ASG Mr. Anshuman Singh, Senior SC Mr. Shivaditya Dhari Sinha, Advocate

---

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

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

6 03-04-2025 Heard Mr. Krishna Mohan Mishra, learned counsel for the petitioners and Dr. K.N. Singh, learned Additional Solicitor General assisted by Mr. Anshuman Singh, learned Senior Standing Counsel for the CGST and CX.

2. The petitioners are aggrieved by and dissatisfied with the order dated 27.03.2024 passed by the Commissioner, Central Tax (Audit) vide DIN: 20240360XY0000774742 as contained in Annexure-1 to the writ application. The main contention of learned counsel for the petitioners is that the impugned order has been passed in violation of principles of natural justice inasmuch as the application dated 21.12.2023 submitted by the petitioners with a request to the Assessing Officer to issue notice under Section 83 of the Finance Act, 1994 (hereinafter referred to to as the 'Act of 1994') read with Section 14 of the Central Excise Act to the employer with a view to collect the copy of the agreement, payment certificate etc. has not at all been considered.

3. Learned counsel submits that on a bare reading of the impugned order (Annexure-1), it would appear that the Commissioner had framed two issues for consideration. In paragraph '4.4' of the impugned order, those issues have been framed.

4. Learned counsel submits that in order to ascertain as to whether the payment shown in Form-26AS during 2016-17 and 2017-18 (up to June) has been received against the services mentioned in the agreement/completion certificate/experience certificate/performance certificate, are duly proved from the document submitted by the noticee and that the concerned payment received against the service provided by the noticee are taxable or exempted, the Commissioner proceeded to consider some of the agreements and other certificates such as completion certificate and performance certificate which were produced by the petitioners.

5. It is submitted that the Commissioner (Respondent No. 2), however, found that some of the relevant documents have not been produced by the petitioners. For example, attention of this Court has been drawn towards paragraph '4.4.9' wherein it is recorded that the noticee has not submitted any documents like agreement/payment certificates in support of their claim and, hence, failed to justify that the payments received against the said service recipients is exempted under Mega Exemption Notification No. 25/2012. For this reason, the competent authority has held that the service provided to the service recipients against payment received in 26AS is taxable.

6. Learned counsel for the petitioners has drawn the attention of this Court towards Annexure-P/9 to the writ application to submit that by filing this petition, a prayer was made to the concerned authority to collect information/ document from the third party, namely,:-

"(i) Yyakti Vikash Kendra, Gaya

(ii) Executive Engineer, Rural Works Department, Work Division, Kahalgaon, Bhagalpur, Bihar

(iii) Food Corporation of India, Regional Office, Patna, Bihar- Exhibition Road, Arunachal Building, Patna-800001.

(iv) Ministry of Surface Transport, Road Wing, IAS Colony Kidwaipuri, Patna

(v) National Project Construction Corporation Limited, Patna- Budhmarg National Project Const., Patna-800001.

(vi) NHPC Limited, Patna- 2nd Floor, Vidyut Bhawan-II, Bailey Road, Patna-800021.

(vii) National Highway Division, Purnia, Bihar, Executive Engineer, National Highway Division, Purnea

(viii) National Highway Division, Gaya, Bihar.

(ix) Rural Works Department, Work Division, Patna, RWD, Work Div. Patna-800001.

(x) Sr. Divisional Account Officer, Eastern Railway, Sr.DEN, East Central Railway, Danapur, Patna-801503.

(xi) PH Division, Patna- Executive Engineer, PD Division, Patna West, Patna.

(xii) RCD Vaishali, Road Division, Hajipur (Road Constructed)."

7. A prayer was made to direct the Superintendent or any authority of the Department to issue notice/summon and collect copy of agreement from the Government Department/ Company.

8. It is submitted that the said application (Annexure-P/9) was not considered by the Commissioner which has resulted in violation of principles of natural justice and in absence of complete facts and materials on the record, the impugned order has been passed.

9. In paragraph '18' of the writ application, the petitioners has made the following statements:-

> "18.That, the petitioner has filed a petition dated 21.12.2023 wherein request was made to the assessing officer to issue notice under section 83 of Service Tax Act read with Section 14 of the Central Excise Act against the employer with a view to collect copy of agreement, payment certificate etc. The respondent, however, had neither considered nor issue summon or made enquiry from the concern employer. It is stated that the respondent was obliged to issue notice/summon on the instance of the application filed by the petitioner or even by his own motion with a view to ascertain the fact and to make proper assessment. Non issue of notice amount to violation of principle of natural justice."

10. It is submitted that paragraph '18' of the writ application has been answered in paragraph '14' of the counter affidavit filed on behalf of the respondents. It is submitted that what have been stated by the petitioners in paragraph '18' of the writ application have not been categorically denied by the answering respondents. Paragraph '14' of the counter affidavit reads as under:

> "14. That against the averment made under this Paragraph No.18 of the Writ Petition, it is humbly stated that the issuance of summons under the relevant provisions of the Act is also a part of investigation and depend upon the investigating authority."

11. Learned counsel submits that since the impugned order suffers from violation of principle of natural justice, it is fit to be set aside by this Court.

12. Dr. K.N. Singh, learned Additional Solicitor General for the Respondents has opposed the writ application. It is submitted that the Commissioner (Respondent No. 2) has passed a reasoned order, however, after going through the statements made in paragraph '14' of the counter affidavit, learned ASG accepts at the Bar that it does not satisfactorily answer paragraph '18' of the writ application. It is not denied that the application as contained in Annexure-P/9 was available on the record and a request was made to the Assessing Officer to issue notice under Section 83 of the Act of 1994 read with Section 14 of the Central Excise Act.

13. After some arguments, learned ASG submits that at best, the matter may be remitted to the Commissioner (Respondent No. 2) for a fresh consideration keeping in view

Annexure-P/9 to the writ application.

14. Having regard to the submissions noted hereinabove and the materials available on the record, particularly, the petition as contained in Annexure-P/9 to the writ application which has not been denied by the respondents, we set aside the impugned order (Annexure-1) and remit the matter to the Assessing Officer (Respondent No. 2) to consider Annexure-P/9 and pass a fresh reasoned order after giving an opportunity of hearing to the petitioners. Such reasoned order shall be passed within a period of two months from the date of receipt/production of a copy of this order. The petitioners must co-operate on the dates of hearing and no unnecessary adjournment shall be granted.

15. Let it be recorded that this Court has not gone into the merit of the case and all contentions are left open for consideration.

16. This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

lekhi/-

U			