IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11826 of 2024

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M/s. Shaurya and Company a Proprietorship Firm having its Office at Shop No. 307, Holding No 42/1/2/307, ward- 28, circle-06, Hari Niwas Complex, New Dakbunglow Road, Patna, 800001, through its Proprietor Gopaal Das Jakhodia, aged about 67 years (Male), Son of Bal Kishan Das Jakhodia, Residing at Plot No-G-35-06 Tower-3. Emraid Garden No-7/102, P.O.- Bada Chauraha, P.S.- Kaushalpuri, Kanpur, District- Kanpur Nagar, State- Uttar Pradesh, Pin- 208002.

... ... Petitioner

Versus

1. The Union of India through the Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi- 110001.
2. The Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi- 110001.
3. The Chief Commissioner, Central GST and CEX, Ranchi Zone, Patna.
4. The Commissioner, CGST and C.Ex. (Hqrs.), Patna- I, Central Revenue Building, Birchand Patel Path, Patna.
5. The Additional Commissioner (ARC), CGST and C. Ex. (Hqrs.), Patna- I, Central Revenue Building Birchand Patel Path, Patna.
6. The Assistant Commissioner Central Tax (Audit), Audit Circle, Office of the Assistant Commissioner, Central Tax (Audit), Audit Circle, Bhagalpur, Shitala Sthan Road, P.O. and P.S.- Tilkamanjhi, Bhagalpur- 812001.
7. The Assistant Commissioner, Office of the Deputy Commissioner, CGST, Patna (Central) Division, Patna, Ground Floor, Chandpura Palace, Opposite Dadi Maa Temple, Bank Road, West Gandhi Maidan, Patna - 800001.
8. The Superintendent, Office of the Superintendent, Service Tax, Range-1, Ground Floor, Chandpura Place, Opposite Dadi Maa Temple, Bank Road, West Gandhi Maidan, Patna - 800001.

... ... Respondents

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Appearance :

For the Petitioner	:	Mr. Brisketu Sharan Pandey, Advocate
	:	Mr. Vijay Kumar Singh, Advocate
For the Respondents	:	Mr. K.N. Singh, Additional Solicitor General
	:	Mr. Anshuman Singh, Senior SC
	:	Mr. Shivaditya Dhari Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

8 28-04-2025 This writ application has been filed seeking

following relief(s):

"(i) For issuing a writ of certiorari or any other appropriate writ quashing/ setting aside the Orders-In-Original dated 14.06.2024 (Annexure P/8) passed by Respondent No. 6 for FY 2013-14 and 2014-15 whereby and whereunder the ex parte assessment order has been passed for the aforesaid period levying Service Tax amounting to Rs.30,35,207/- under Section 73(2) of the Finance Act, 1994 (hereinafter referred to as 'the Finance Act'), along with interest at applicable rate under section 75 of the Finance Act, 100% Penalty amounting to Rs.30,35,207/- under section 78 of Finance Act, Penalty of Rs.10,000/- under section 77(1) (c) of Finance Act, Penalty of Rs.10,000/- under section 77(2) in contravention of section 70 of Finance Act, 1994 r/w section 174 of the CGST Act, 2017 and late fee of Rs.2,900/- under section 70 of the Finance Act, 1994 for the periods of FY 2013-14 and FY 2014-15;

(ii) For issuance of a writ of certiorari or any other appropriate writ quashing/ setting aside the Demand-Cum Show Cause Notice dated 10.05.2019 (Annexure P/3) passed by Respondent No. 7 for FY 2013-14 and 2014-15 whereby and whereunder assessment initiated and thereby proposed to levy service amounting to Rs.30,35,207/- liability under Section 73(1) of Finance Act, 1994, interest at applicable rate under section 75 of the Finance Act, 1994, Penalty under section 78 of Finance Act, 1994, Penalty under section 77(1) of Finance Act, 1994, Penalty under section 77(2) in contravention of section 70 of Finance Act, 1994 and late fee of Rs.2,900/-under

section 70 of the Finance Act, 1994 for the periods of FY 2013-14 and FY 2014-15;

(iii) For holding that the proceeding in relation to impugned assessment order/order in original dated 14.06.2024 (Annexure-P/8) as also the aforesaid impugned order is in original is bad in law as it has been conducted beyond the mandates of section 73 (4B) of the Finance Act, 1994;

(iv) For holding that the case of the petitioner is covered by the order dated 04.04.2024 passed in CWJC No.18398/2023 - M/s Kanak Automobiles Pvt. Ltd. Vs. Union of India & Ors.;

(v) For holding that the proceedings which was initiated in the year 2019 by issuance of demand-cum- show cause notice on 10.05.2019 (which was responded by the petitioner on 30.05.2019) and thereafter nothing was done until 2024 when subsequent notices were issued one after other i.e. on 25.01.2024, 15.02.2024 and 29.02.2024 before passing ex-parte order against the petitioner is in violation to section 74 of the Finance Act, 1994;

vi) For holding that the impugned assessment process suffers from inherent jurisdiction error in as much as the show cause notice dated 10.05.2019 through which the assessment for the concerned year i.e. F.Y. 2013-14 and 2014-15 was initiated by Respondent No.7 in Patna Division whereas for no justifiable reasons the case was transferred to Respondent No.6 in Bhagalpur Division, who has no jurisdiction or authority assess, moreover the authority issuing show cause has not issued the impugned order in originals;

(vii) for holding that the manner in

which demand for tax, interest and penalty has been raised against the petitioner is in violation of principles of natural justice in the fact that on one hand, the demand-cum-show cause notice dated 10.05.2019 proposes to levy late fee on the petitioner for late filing of service tax returns, i.e., the respondent had the data of service tax returns filed by the petitioner, while on the other hand, the turnover of the petitioner is inflated on the pretext that the petitioner has not filed the service tax returns at all;

(viii) For holding that serving notices of demand-Cum Show Cause Notice dated 10.05.2019 had been replied to by the petitioner on 30.05.2019 and the same was acknowledged by the respondent, issuing Orders-In-Original dated 14.06.2024 (Annexure P/8) citing deficiencies in the reply of the petitioner after almost four and a half years, is not sustained in the eyes of law and fit to be declared null and void;

(ix) For holding that the imposition of liability of tax, interest and penalty on Petitioner by the Respondent is illegal and void;

(x) For issuance of an appropriate direction including a writ of mandamus preventing the respondents from taking any coercive steps against the petitioner including attachment of the account of the petitioner till final adjudication of the present writ application; and

(xi) Pass any such other order/orders as this Hon'ble Court may deem fit and proper on the facts and in the circumstances of the case."

2. It appears from the perusal of the records that the petitioner was served with a demand-cum-show cause notice (in short 'SCN') vide no.1764 dated 10.05.2019. The petitioner was informed that during the investigation it was revealed that petitioner-company had suppressed the fact from the department, they were engaged in the business of event management as the activities of the petitioner was falling under the category of "Event Management Service" to their various clients as defined under erstwhile Section 65 of the Finance Act, 1994 (in short 'Act of 1994'), till 30.06.2012 and, hence, the same being not falling under any of the items of the Mega Exemption Notification No.25 of 2012-ST dated 20.06.2012, was liable to be covered by the service tax liability. The petitioner did not adjudge the service tax liability and not paid the Service Tax amounting to Rs.30,35,207/- during the period 2013-2014 to 2014-2015.

3. After receipt of the SCN, petitioner submitted his response dated 30.05.2019 (Annexure 'P/4'). It is the specific case of the petitioner that for about five years, the respondent authorities remained sitting idle and nothing was done in the matter. It is submitted that all of a sudden vide letter no.1714 dated 25.01.2024 (Annexure 'P/5'), petitioner was given an information that a date of personal hearing has been fixed.

4. Learned counsel submits that the notices as contained in Annexure 'P/5' and 'P/6' were sent on the old address of the petitioner, which were not served. Subsequently, an *exparte* assessment was done under Section 72 of the Act of 1994 vide impugned order dated 14.06.2024 and the respondent no.6 has levied a sum of Rs.30,35,207/- as liability on account of Service Tax. The respondent no. 6 has also imposed 100% penalty under Section 78 of the Act of 1994, directed to pay interest under Section 75 and further, imposed penalty of Rs. 10,000/- under Section 77(1)(c) and Section 77(2) of the Act of 1994. A late fee of Rs. 20,000/- under Section 70 has also been imposed. The order in original has been passed by the respondent no.6, who is not the authority issuing SCN.

5. Learned counsel has relied upon judgment of learned Co-ordinate Bench of this Court in the case of **M/s Kanak Automobiles Private Limited vs. The Union of India & Ors. (CWJC No.18398 of 2023)** to submit that in the said case the learned Co-ordinate Bench of this Court interfered with the order in original after noticing that there was a delay of about two years in passing of the order in original after issuance of the SCN. It is submitted that the judgment of the learned Co-ordinate Bench was challenged in the Hon'ble Apex Court in

SLP (Civil) Diary No.54313/2024, however, same was not interfered with, taking into consideration the quantum of tax involved in the said case which was Rs.86 Lakh.

6. Learned counsel has also relied upon the judgment of this Court passed in the case of **M/s Power Spectrum Sarbidipur vs. The Union of India & Anr.** (**CWJC No.16772 of 2024**) to submit that this Court has, after relying upon the judgments of the Hon'ble Delhi High Court and the Hon'ble Gujarat High Court, taken a view that the time frame as mentioned under Section 73(4B) of the Act of 1994 cannot be extended for an inordinate period. It is submitted that the present case is squarely covered by the judgment of the learned Co-ordinate Bench of this Court as well as by the recent Judgment of this Court in the case of **M/s Power Spectrum Sarbidipur** (*supra*).

7. On record, there is a counter affidavit and a supplementary counter affidavit of the respondent authorities.

8. In the counter affidavit it is stated that the order in original has been passed by the respondent no.6 i.e. the Assistant Commissioner, Central Tax (Audit), Bhagalpur, who has been empowered to adjudicate the matter vide letter no. 3268-73 dated 09.10.2023 issued by the Joint Commissioner

CCO Ranchi Zone, Patna. It is submitted that the show cause notice was issued to the petitioner by invoking extended period of limitation in terms of proviso to Section 73(1) of the Act of 1994. The relevant period in the instant SCN is 2013-14 and 2014-2015. The respondent authority had fixed the date of hearing on 07.02.2024 and thereafter, the dates were further fixed on 15.02.2024 and 12.03.2024, but the authorized representative of the petitioner did not appear. In the counter affidavit, however, there is no whisper as to why no step was taken by the respondent authorities during the period 2019 to 2024 i.e. after issuance of SCN and before the date of issuance of letter for personal hearing.

9. The supplementary counter affidavit has also been filed, but again in the supplementary counter affidavit nothing has been stated as to why it could not become possible for the respondent authority to determine the Service Tax liability within the prescribed period.

10. This Court has got occasion to consider the identical issue in its recent judgment in the case of **M/s Power Spectrum Sarbidipur** (supra). This Court has agreed with the submission of learned Senior Standing Counsel for the CGST and CX in the said case that Section 73(4B), Clause (b) does not provide a mandatory period within which the order determining the Service Tax liability is to be passed, but it is the view of this Court that time frame of six months/one year as mentioned in Section 73(4B) cannot be extended for an inordinate period.

11. This Court has referred the judgments of the Hon’ble Delhi High Court in the case of **L.R. Sharma & Co. vs. Union of India** reported in **2024 SCC OnLine Del 9031** and has noticed that the Hon’ble Delhi High Court has referred the judgment of Hon’ble Gujarat High Court in **Siddhi Vinayak Syntex Pvt. Ltd. v. Union of India** reported in **2017 (352) E.L.T. 455 (Guj.)**. Paragraph ‘16’ and ‘17’ of the judgment in **M/s Power Spectrum Sarbidipur** (supra) are bring reproduced as under for a ready reference:

> *“**16.** In the case of **L.R. Sharma** (supra) and in the case of **Sunder System Pvt. Ltd. v. Union of India and Others** reported in **2020 (33) G.S.T.L. 621 (Del)**, sub-section (4B) of Section 73 of the Finance Act, 1994 has fallen for consideration. In **Sunder System Pvt. Ltd. (supra)**, the Hon'ble Delhi High Court has quoted in paragraph '9' of it's judgment one paragraph from **National Building Construction Co. Ltd Vs. Union of India** reported in **2019 (20) G.S.T.L. 515 (Del.)**. The relevant paragraph from the said judgment is being reproduced hereunder:-*
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> *"9. A Coordinate Bench of this Court in the case of National Building Construction Co. Ltd. Vs. Union of India; 2019 (20) G.S.T.L. 515*

(Del.) has held as under:-

"20. Sub-section 4B to Section 73 of the Fin Act fixes the time or limitation period within which the Central Excise Officer has to adjudicate and decide the show cause notice. The time period fixed under Clause A or B is six months and one year respectively. Limitation period for passing of the adjudication order, described as Order-in-Original, starts from the date of notice under Sub-section 1 to Section 73 of the Fin Act.

***17.** In **L.R. Sharma** (supra), the Hon'ble Delhi High Court has referred the judgment of the Hon'ble Gujarat High Court in **Siddhi Vinayak Syntex Pvt. Ltd. v. Union of India** reported in **2017 (352) E.L.T. 455 (Guj.)** in respect of Section 11A of the Central Excise Act, 1944 wherein the Hon'ble Court has observed as under:-*

27. Similarly, the High Court of Gujarat in Siddhi Vinayak Syntex Pvt. Ltd. v. Union of India (supra), in respect of Section 11A of Central Excise Act, 1944, had observed as under:

***"When the legislature has used the expression "where it is possible to do so", it means that if in the ordinary course it is possible to determine the amount of duty within the specified time frame, it should be so done.** The legislature has wisely not prescribed a time limit and has specified such time limit where it is possible to do so, for the reason that the adjudicating authority for several reasons may not be in a position to decide the matter within the specified time frame, namely, a large number of witnesses may have to be examined, the record of the case may be very bulky, huge workload, non-availability of an officer, etc. which*

> *are genuine reasons for not being able to determine the amount of duty within the stipulated time frame.* ***However, when a matter is consigned to the call book and kept in cold storage for years together, it is not on account of it not being possible for the authority to decide the case, but on grounds which are extraneous to the proceedings. In the opinion of this court, when the legislature in its wisdom has prescribed a particular time limit, the CBEC has no power or authority to extend such time limit for years on end merely to await a decision in another case. The adjudicatory authority is required to decide each case as it comes, unless restrained by an order of a higher forum****."*
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> (Emphasis added)"

12. There is no contest to the submission of learned counsel for the petitioner that in this case the order-in-original has been passed after five years from the date of issuance of the SCN (Annexure 'P/3'). The counter affidavit as well as the additional counter affidavit are completely silent and no reason at all has been shown that why it was not possible to pass the order-in-original within prescribed period.

13. Taking note of the views expressed by learned Co-ordinate Bench of this Court and the judgment of this Court in **M/s Power Spectrum** (*supra*), the impugned order-in-original is liable to be set aside. The present case would be covered by the afore-mentioned judgment of this Court.

14. In result, the impugned order-in-original is set aside.

15. The demand, if any, consequent to the said order-in-original is also set aside.

16. This writ petition is allowed.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

anand/-

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