**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.16404 of 2024**

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M/s Cohesive Infrastructure Developers Private Limited having office at C/o- Smt. Sudha Devi, House No.- 107, BMP Road, Kautilya Nagar, Patna- 800014 through its Managing Director, Shushil Kumar, Male aged about 50 years, Son of Shri Birendra Kumar, residing at 303, Manav Enclave Appartment, Vivekanand Park Lane, Alpana Market, Patliputra Colony, Boring Road, Patna- 800013.

... ... Petitioner/s

Versus

1. Union of India through The Principal Commissioner of Central GST and Central Excise, Patna-1, 3rd Floor, Kendriya Rajaswa Bhawan (Annexe Building), Bir Chand Patel Path, Patna- 800001.
2. The Additional/Joint Commissioner of CGST and Central Excise, Patna-l, Kendriya Rajaswa Bhawan (Annexe Building), Bir Chand Patel Path, Patna- 800001.
3. The Deputy/Assistant Commissioner of CGST and Central Excise, Patna (Central) Division, Ground Floor, Chandpura Palace, Bank Road, West Gandhi Maidan, Patna- 800001.

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Ahswani Kumar, Advocate (virtual mode)<br>Mr. Raj Kumar, Advocate |
| For the Respondent/s | : | Mr. Additional Solicitor General<br>Mr. Anshuman Singh, Sr. Standing Counsel |

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

**ORAL JUDGMENT**
**(Per: HONOURABLE MR. JUSTICE SOURENDRA PANDEY)**

**Date : 19-03-2025**

Heard Mr. Ashwani Kumar, learned counsel for the petitioner through video conferencing and Dr. K.N. Singh, learned Additional Solicitor General of India 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 a writ in the nature of certiorari for quashing the Order-In-Original No. 150/ST/JC/2024 dated 18.07.2024 passed by the Ld. Joint Commissioner of CGST and Central Excise, Patna-l in which the adjudication proceedings itself was initiated after a period of one year from the date of issuance of show cause notice F. No. SCN/ST/768/2021-Adjn-O/o- Pr. COMMR-Patna-I/11085 dated 23.10.2021 by grant of first Personal Hearing on 11.12.2023 in utter violation of mandate provided under sub-section (4B) of Section 73 of Chapter V of the Finance Act, 1994 and also without considering the reply of the Petitioner and the assertions made during the Personal Hearing in utter violation of the principles of natural justice; And/Or*
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> *ii) As ad-interim relief, for seeking directions to the Respondent Authorities for not proceeding for recovery of the determined*

*Service tax under the Order-In-Original No. 150/ST/JC/2024 dated 18.07.2024 passed by the Ld. Joint Commissioner of CGST and Central Excise, Patna-I till the pendency of this Writ Application; And/or*

*iii) To grant any other relief or reliefs to which the petitioners are entitled in the facts and circumstances of the case."*

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

4. The petitioner was served with a demand-cum-show cause notice (SDN) contained in Annexure P1 dated 23.10.2021 issued by the respondent authority and in response thereto, the petitioner submitted an application/reply to the demand-cum-show cause notice dated 23.10.2021 in respect of service tax for the period 2016-2017 to 2017-18 (up to June, 2017).

5. The said reply has been brought on record by way of Annexure P2 which bears the signature and the seal of the Joint Commissioner, GST & CX Hqrs., Patna acknowledging the receipt of the reply on 23.11.2021.

6. The petitioner has also sent an email on 12th December

2023 requesting for grant of time with reference to C. No. SCN/ST/768/2021-Adjn-O/o Pr. Commr-Patna-I/7534 dated 12th December, 2021. The said email refers to the previous conversation which took place during personal hearing, a day before, with respect to the said matter and wherein a comprehensive reply was sought from the petitioner for the period 2016-2017 to 2017-18 (up to June, 2017). The said email communication also bears the fact that earlier a reply was filed on 23.11.2021.

7. The copy of the said email has been brought on record by way of Annexure P3. The petitioner has categorically stated in para '4' of the writ petition that the petitioner had filed it's reply in response to the show cause notice dated 23.10.2021 on 23.11.2021. Further, in paragraph No. 5 of the writ petition the petitioner has categorically stated that the first opportunity of personal hearing in the matter was granted vide letter dated 1/4.12.2023 and 11.12.2023.

8. The petitioner has also stated therein that the Order-In-Original No. 150/ST/JC/2024 dated 18.07.2024 records that no reply was filed by the petitioner in response to the show cause notice dated 23.10.2021 which is not a correct fact. The petitioner has stated in the said paragraph that the Managing

Director of the petitioner appeared in the office of the Joint Commissioner, GST and Central Excise, Patna-I on 11.12.2024 and was asked to submit further documents for seeking exemption. An email to that effect was brought on record, which has been discussed above, by way of Annexure P3.

9. We find from the pleadings available on record that paragraph Nos. '4' and '5' of the writ application have not been denied by the respondents. All that has been stated in paragraph No. 5 of the counter affidavit is that the petitioner, though, had provided the taxable service during the relevant period it neither assessed the service tax liability nor filed its' statutory service tax returns/ST-III for the relevant period with *malafide* intention to evade the payment of service tax.

10. The counter affidavit further states that the noticee/petitioner were granted ample opportunity of personal hearing on 11.12.2023, 01.04.2024, 26.04.2024 and 09.07.2024, however, neither the noticee nor their authorized representative appeared or submitted any document on the scheduled date. As has been discussed above, even this contention of the respondents is contrary to the records of the case as from the email dated 12.12.2023 (P3) it is apparent that the petitioner had appeared before the authority on 11.12.2023 and the petitioner

through the said email sought one month's time to file the reply along with the required data. The said email clearly states that they are urging for one month time to file a supplementary reply.

11. Despite such reply submitted by the petitioner pursuant to the show cause notice dated 23.10.2021 and the email dated 12.12.2023 the Joint Commissioner, CGST and Central Excise, Patna- I, in the impugned order dated 18.07.2024 which has been brought on record as Annexure 'P4' to the writ petition, in paragraph 2.O has stated as follows :

> "***2.O Defence Reply***
>
> *The noticee did not submit defence reply against the show case Notice dated 23.10.2021."*

12. Referring to the aforesaid paragraph 2.O of the impugned order, learned counsel for the petitioner has vehemently submitted that the reply submitted by the petitioner as contained in Annexures P2 and P3 have not at all been considered and this has resulted in jurisdictional error and the impugned order suffers from legal infirmity as it has been passed without consideration of the materials available on the record.

13. Learned Senior Standing counsel has made all efforts to submit that the petitioner despite receiving show cause notice failed to submit any documents in relation to consideration received from other service recipients nor did they appear personally or through their authorized representative or even submitted any documents on the scheduled date. However, he is not in a position to deny what has been observed in paragraph No. 2.O of the impugned order and cannot defend it. In fact, there is no denial of the statement made in paragraph ‘4’ of the writ petition that a reply to the show-cause notice had been submitted.

14. Having regard to the submissions noted herein above and the materials which we have gone into, we are of the considered opinion that the impugned order as contained in Annexure ‘P4’ suffers from violation of Principles of Natural Justice. The reply submitted by the petitioner seems to have been forgotten and not taken note of and thereby obviously not considered by the competent authority while passing the impugned order as contained in Annexure ‘P4’.

15. Thus, in the aforesaid circumstances, we set aside the impugned order dated 18.07.2024 passed by the Joint Commissioner, CGST and Central Excise, Patna- I (Annexure P4) on this ground alone and remit the matter back to the

competent authority who shall consider the reply submitted by the petitioner, give an opportunity of personal hearing and shall pass order afresh taking into account all the points which are open to the petitioner in accordance with law.

16. All contentions are left open to the parties.

17. This writ petition is allowed to the extent indicated herein above.

**(Rajeev Ranjan Prasad, J)**

**(Sourendra Pandey, J)**

Prakash/-

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| **AFR/NAFR** | NA |
| **CAV DATE** | NA |
| **Uploading Date** | 28.03.2025 |
| **Transmission Date** | 28.03.2025 |