IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16772 of 2024

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M/s Power Spectrum Sarbidipur, Kahalgaon, Bhagalpur, Bihar- 813203 Proprietorship firm having its office at Sarbidipur, Kahalgaon, Bhagalpur, Bihar-813203 through its Proprietor Abha Singh, aged about 61 years (Female), Wife of Kamal Kishore @ Kamal Kishore Singh, Resident of Village- Mahant Baba Mandir, Sarabadipur, P.S.- Kahal Gaon, District- Bhagalpur, Bihar - 813203.

... ... Petitioner

Versus

1. The Union of India through the Chief Commissioner, of Central Goods and Services Tax (GST) and Central Excise (CX), Ranchi Zone, Patna.
2. The Assistant Commissioner, Central Goods and Services Tax (CGST) and Central Excise (CX), Division - Bhagalpur.

... ... Respondents

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Appearance :

For the Petitioner/s : Mr. Aditya Prakash, Advocate
Mr. Rudra Pratap Singh, Advocate
Mr. Sudarshan Kumar, Advocate
Mr. Akshansh Ankit, Advocate

For the Respondent/s : Mr. Anshuman Singh, Senior SC

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

Date : 17-04-2025

Heard Mr. Aditya Prakash, learned counsel for the petitioner and Mr. Anshuman Singh, learned Senior Standing Counsel for the CGST and CX.

2. The petitioner in the present writ application is seeking the following reliefs:-

> "a) To quash the impugned order-in-original bearing No.42/ST/AC/BGP/2024-25 dated 09.07.2024 passed by the Respondent No. 2 whereby and whereunder tax liabilities, interest and penalties for the Financial year

2012-13 to 2013-14 were imposed against the Petitioner under the Finance Act, 1994, in a most arbitrary manner without following the statutory provisions as well as the principles of natural justice.

b) For issuance of appropriate direction restraining the respondents from taking any coercive action against the Petitioner for the recovery of any amount of service tax, interest and penalty, in terms of the impugned order-in-original bearing No.42/ST/AC/BGP/2024-25 dated 09.07.2024 passed by Respondent No. 2 during the pendency of the present writ application.

c) To pass any other order/orders in shape of a consequential relief to which the Petitioner may be found to be legally entitled to in the facts and circumstances of the instant case at hand."

<u>Brief Facts of the Case</u>

3. It is the case of the petitioner that being a proprietorship firm, it is registered under the Service Tax Laws as a maintenance or repair service provider. A demand-cum-show cause notice (in short 'SCN') as contained in Annexure-P/1 to the writ application was issued on 05.09.2018 alleging that the petitioner had received certain amount from its customers but willfully escaped the proper assessment of taxable value with intent to evade the payment of leviable Service Tax including Education Cess and Secondary & Higher Education Cess being

Rs.14,10,900/- for the years from 2012-13,2013-14 and the amount to be calculated on availability of the requisite data for the year 2014-15, 2015-16 and 2016-17. In the ‘SCN’ (Annexure-P/1), it was alleged that the petitioner had received Rs.1,14,15,052/- under Section 194C of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act of 1961’) during the finanical year 2012-13 and 2013-14 but the payment of service tax in that particular financial year is not in consonance with the said payment.

4. The petitioner was served with the ‘SCN’ and was called upon to submit his defence reply. It, however, appears that the petitioner did not submit any defence reply on the ‘SCN’. Thereafter, as it appears from the records, date of personal hearing was fixed on 21.11.2023, 07.03.2024 and 15.05.2024 and the same was communicated to the petitioner but the petitioner had neither himself nor through his authorized representative participated in the personal hearing.

5. In the circumstances stated above, the order-in-original (Annexure-P/2) has been passed on 09.07.2024 by Respondent No. 2. The operative part of the order-in-original which is impugned in the present writ application reads as under:-

> “1. I determine and confirm demand of Service Tax including Cess amounting to Rs.14,10,900/- (Rupees Fourteen lakhs ten Thousands Nine Hundreds only) (Inclusive of

Education Cess & Sec. Higher Education Cess) for the year 2012-13 & 2013-14 upon M/s Power Spectrum (Prop-Abhay Singh), Sarbidipur, Kahalgaon, Bhagalpur, Bihar 813203 having Service Tax Registration No. CITPS0480DSD002 under Section 73(2) of the Finance Act, 1994 read with section 174 of the CGST Act, 2017."

Submissions on behalf of the Petitioner

6. Before this Court, learned counsel for the petitioner has submitted that the 'SCN' as well as the Order-in-Original were issued beyond the period of limitation prescribed by the statute. The Adjudicating Officer (Respondent No. 2) has issued the impugned order (Annexure-P/2) after a substantive delay of approximately five years and ten months which is hit by Section 73 (4B) of the Finance Act, 1994 (hereinafter referred to as the 'Act of 1994'). It is submitted that according to the said provision, the Adjudicating Officer was obliged to determine the amount of service tax within a period of one year in the present case if at all he was justified in invoking the extended period of limitation of five years under proviso to sub-section (1) of Section 73 of the Act of 1994.

7. It is submitted that sub-section (4B) of Section 73 of the Act of 1994 has fallen for consideration before this Court in **M/s Kanak Automobiles Private Limited vs. the Union of India**

and Others in CWJC No. 18398 of 2023. In the said case, a learned co-ordinate Bench of this Court was pleased to set aside the order passed by the Adjudicating Officer on the ground of huge delay in passing of the order even as there was no explanation to satisfy the Court with the reasons for not passing the order within the period of limitation.

8. Learned counsel has further relied upon a Division Bench judgment of the Hon'ble Delhi High Court in the case of **L.R. Sharma & Co. v. Union of India** reported in **2024 SCC OnLine Del 9031**. In the said case, the Hon'ble Division Bench has taken a view that Section 73(4B) was framed and introduced in the Finance Act to ensure effective administration of taxation and any inordinate delay by the Revenue itself in prosecuting its own cases cannot be construed in their favour by stretching the period of limitation to nine years especially when the provision requires the proceedings to be concluded within six months/one year. The Hon'ble Delhi High Court, therefore, quashed and set aside the impugned notice issued by Respondent No. 5 in the said case.

9. Learned counsel submits that recently, in the case of this very petitioner in respect of the financial year 2014-15 to 2017-18, a learned co-ordinate Bench of this Court has passed order dated 15.02.2025 in CWJC No. 17171 of 2024. The learned co-ordinate Bench has held that the case of the present petitioner would be squarely covered by **M/S Kanak Automobiles Private Limited** case and having said so, the impugned order in the said writ application has been quashed. The present case would be standing on identical footing as it is between the same parties and the same issue is involved hereunder.

<u>Submissions on behalf of the Respondents</u>

10. The writ application has been contested by learned Senior Standing Counsel for the CGST and CX. Emphasis has been given in course of argument on the submission that despite opportunity given to the petitioner, the petitioner did not file any defence reply and failed to avail the opportunity of hearing.

11. Learned Senior Standing Counsel for the Department has at one stage gone on to submit that the delay took place during the Corona period, however, very soon he realized that in this case, the 'SCN' was issued on 05.09.2018 and the period prescribed for determination even if assumed to be one year in terms of clause (b) of sub-section (4B) of Section 73 of the Act of 1994, it came to an end on 05.09.2019 which was much before the beginning of the Corona period.

12. This Court called upon learned Senior Standing Counsel for the CGST and CX to show from the counter affidavit as to whether they have shown, in terms of the statutory provision that it was not possible to pass the order determining the liability of the petitioner within a period of one year. In the counter affidavit, however, no whisper has been made in this regard and no attempt has been taken to say as to why it was not possible to pass the order within one year.

Consideration

13. Having heard learned counsel for the petitioner and learned Senior Standing Counsel for the CGST and CX as also taking note of the relevant provisions of Section 73 of the Act of 1994, this Court finds that the Act of 1994 clearly stipulates the intention of the legislature in providing a time frame in the matter of determination of the amount of service tax due under sub-section (2) of Section 73 of the Act of 1994. Section 73(1) with it's proviso and Section 73(4B) are being reproduced hereunder for a ready reference:-

> "**SECTION 73. Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded.** —
> **(1)** Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, the Central Excise

Officer may, within [1][[2][thirty months]] from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :

PROVIDED that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of —

(a) fraud; or
(b) collusion; or
(c) wilful mis-statement; or
(d) suppression of facts; or
(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax,

by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words [1][[2][thirty months]], the words "five years" had been substituted.

[1]**(4B)** The Central Excise Officer shall determine the amount of service tax due under sub-section (2) —

(a) within six months from the date of notice where it is possible to do so, in respect of cases [2][falling under] sub-section (1);

(b) within one year from the date of notice, where it is possible to do so, in respect of cases falling under the proviso to sub-section (1) or the proviso to sub-section (4A);]."

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1. Substituted for "one year" by Finance Act, 2012 (23 of 2012), dt.28-5-2012.
2. Substituted for "eighteen months" by Finance Act, 2016 (28 of 2016), dt.14-5-2016.
1. Inserted by Finance (No. 2) Act, 2014 (25 of 2014), dt. 6-8-2014, dt. 6-8-2014
2. Substituted for "whose limitation is specified as eighteen months in" by Finance Act, 2016 (28 of 2016), dt. 14-5-2016

14. In the case of the petitioner, 'SCN' has been issued under proviso to Section 73(1) in the light of saving provision of Section 174(2) of the Central Goods and Services Tax/Bihar Goods and Services Tax Act, 2017.

15. This Court is alive to the submission of learned Senior Standing Counsel that the period of limitation of one year as prescribed under clause (b) above is not absolute. In **Kanak Automobiles Private Limited** case, the learned co-ordinate Bench has agreed to the said submission to the extent that the period of limitation is not absolute period stated in clause (b) of sub-section (4B) of Section 73 of the Act of 1994, but then a question arises as to whether a duty has been cast upon the Department to show that it was not possible to pass an order determining the amount within one year from the date of notice in respect of cases falling under the proviso to sub-section (1) or the proviso to sub-section (4A) of the Act of 1994. This Court has taken a view that in an appropriate case, this would be a matter of fact which would be required to be looked into in the context of a particular case.

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:-

> "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**."
>
> (Emphasis added)"

18. There is a consistent view on this point that the time frame of six months/one year as mentioned in Section 73(4B) cannot be extended for an inordinate period. In this case, it is over five years and the Revenue has failed to explain as to how such a delay has taken place.

19. On facts, this Court finds no ambiguity in the present case. There is a huge delay of five and half years from the date of 'SCN' in passing of the Order-in-Original (Annexure-P/2). No explanation at all is present in the counter affidavit. Coupled with this fact, the views expressed by the learned co-ordinate Bench of this Court in the case of this petitioner in CWJC No. 17171 of 2024 persuades this Court to take an identical view.

20. In result, the Order-in-Original as contained in Annexure-P/2 is hereby quashed.

21. This Writ Application is allowed.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

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AFR/NAFR	AFR
CAV DATE	
Uploading Date	23.04.2025
Transmission Date	