

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17163 of 2024

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M/s Akash Tour and Travel., Hotel Akash Campus, Hotel Lane, Opp. B.O.I. Fraser Road, Patna-800001 Proprietorship firm having its Office at Hotel Lane, Akash Gaurav, aged about 34 Years (Male), Son of Uday Kumar, Resident of Station Road Goriatoli, Patna, Bihar- 800001.

... .. Petitioner

Versus

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

... .. 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	:	Dr. K.N. Singh, Additional Solicitor General

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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 : 30-04-2025

Heard Mr. Aditya Prakash, learned counsel for the petitioner and Dr. K.N. Singh, learned Additional Solicitor General for the Central Goods and Services Tax (CGST) and Central Excise (CX).

2. In this writ application, the petitioner has challenged the order-in-original vide No. 103/AC/CGST-PCD/PAT/2024-25 dated 23.09.2024 (Annexure 'P2') passed by Respondent No. 2. The petitioner has also prayed for restraining the respondents from taking any coercive action against the petitioner for recovery of



any amount of service tax, interest and penalty, in terms of Annexure 'P2'.

Brief Facts of the Case

3. By the impugned order, the Respondent No. 2 had determined a service tax liability of Rs.5,27,684/- upon the petitioner under Section 73(1) of the Finance Act, 1994 (hereinafter referred to as the 'Act of 1994') for the financial year 2015-16 (October-March) to 2017-18 (up to June 2017). Respondent No. 2 has also awarded interest thereon and imposed penalty in accordance with Section 75, Section 78 and Section 77(2) of the Act of 1994.

Submissions on behalf of the Petitioner

4. Learned counsel for the petitioner has raised a short point for consideration. It is his submission that even as the Respondent Authority invoked extended period of limitation in terms of proviso to Sub-Section (1) of Section 73 of the Act of 1994, it was incumbent upon the said Authority to determine the tax liability either within the prescribed period of one year in terms of clause (b) of Sub-Section (4B) of Section 73 or the Authority was required to show at least prima-facie that it was not possible for him to determine the liability within the said prescribed period.



5. Learned counsel has relied upon the learned Co-ordinate Bench of this Court in the case of **M/s Kanak Automobiles Private Limited vs. the Union of India and Others** (CWJC No. 18398 of 2023 dated 04.04.2024), **Pawan Kumar Upmanyu versus the Union of Indian and Others** (CWJC No. 11975 of 2024 dated 14.02.2025) and the judgment of this Court in the case of **M/s Power Spectrum versus the Union of India and Anr.** (CWJC No. 16772 of 2024 dated 17.04.2025).

6. It is submitted that in the present case, the show cause notice (Annexure 'P1') was issued on 16.04.2021 by Respondent No. 2 but the order-in-original has been passed on 23.09.2024 i.e. after at least three and half years.

7. It is further submitted that when the judgment of learned Co-ordinate Bench in the case of **M/s Kanak Automobiles Private Limited** (supra) was challenged before the Hon'ble Supreme Court in SLP (Civil) Diary No. 54313/2024 decided on 03.01.2025, the Hon'ble Supreme Court refused to interfere with the same, considering the quantum of tax involved in the said case.

8. This Court has been informed that the quantum of tax in the case of **M/s Kanak Automobiles Private Limited** (supra) was Rs.86 lakhs/-. Similar view has been taken by another learned



Co-ordinate Bench of this Court in the case of **Pawan Kumar Upmanyu** (supra) considering the quantum of tax. It is submitted that in the present case, the quantum of tax is a meagre amount of Rs.5,27,000/-, therefore, this case would be covered by the judgment of the learned Co-ordinate Benches of this Court.

Submissions on behalf of CGST and CX

9. The writ application has been contested by learned ASG. It is submitted that no doubt, in this case, the determination of tax liability has been done after approximately three and half years from the date of issuance of show cause notice but the period prescribed under clause (b) of Sub-Section (4B) of Section 73 of the Act of 1994 is not an absolute and mandatory period within which the determination has to be done by the Taxing Authority.

10. Learned ASG submits that in **M/s Kanak Automobiles Private Limited** (supra), the learned Co-ordinate Bench has agreed in paragraph '10' of its order/judgment that the period prescribed in the Act for purpose of determination of the liability is not a final period.

11. Learned ASG, however, after going through the counter affidavit does not find any averment in the counter affidavit even to prima-facie satisfy this Court that it was not



possible to do within the prescribed period of one year. The counter affidavit is admittedly silent on this point.

12. Learned ASG further submits that the observations of the Hon'ble Supreme Court in SLP (Civil) Diary No. 54313/2024 in the case of **M/s Kanak Automobiles Private Limited** (supra) was only meant for Department. The Department has fixed monetary limits for filing appeals before GSTAT, High Courts and Supreme Court. The limit has been prescribed by virtue of powers conferred by Section 120 of the Central Goods and Services Tax, 2017 (in short 'CGST Act') read with Section 168 of the CGST Act and the Board has not acted on the recommendations of the GST Council while fixing the monetary limits. For purpose of the Supreme Court, the monetary limit for filing an appeal has been fixed below Rs. Two Crores/-. It is because of this, the Hon'ble Supreme Court observed that the Court was not interfering with the judgment of the High Court considering the quantum involved.

Consideration

13. Having regard to the afore-mentioned submissions, we find that Sub-Section (4B) of Section 73 of the Act of 1994 reads as under:-



“SECTION 73. Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded. —

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);].”

14. In the present case, there is no dispute on facts that the determination of liability has been done after almost three and half years. In the counter affidavit, there is no whisper even to prima-facie satisfy this Court that it was not possible for the Taxing Authority to determine the tax liability within prescribed period of one year at first instance.

15. In the above-mentioned background, when we go through the judgments of this Court in the case of **M/s Kanak Automobiles Private Limited** (supra), **Pawan Kumar Upmanyu** (supra) and **M/s Power Spectrum** (supra), we find that this case would be covered by the ratio of these judgments.

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



16. We reproduce paragraphs ‘15’, ‘16’ and ‘17’ of the judgment in the case of **M/s Power Spectrum** (supra) hereunder for a ready reference:-

“**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 its 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, has 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)”

17. In the light of the above-mentioned discussions, this Court is of the considered opinion that the order-in-original (Annexure ‘P2’) is liable to be set aside.

18. We, accordingly, set aside Annexure ‘P2’ and the consequent demand raised against the petitioner.

19. This writ application is allowed.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

SUSHMA2/-

AFR/NAFR	
CAV DATE	
Uploading Date	01.05.2025
Transmission Date	

