IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18635 of 2024

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M/s Sanjeev Shanker Urmila and Co. through its Managing Partner, Mr. Sanjeev Shanker, male, aged about 62 years, S/o Sheo Shankar Singh having its registered office at 1st Floor, Pushpanjali Market, Near Thakurbari Road, P.O. and P.S. - Kadamkuan, District- Patna, Bihar - 800003.

... ... Petitioner/s

Versus

1. Union of India through the Secretary, Minister of finance, New Delhi.
2. The Principal Commissioner, CGST and Central Excise Commissioner, CGST and Central Excise Commissionerate Patna - I, Bihar.
3. Assistant Commissioner, Central GST and Central Excise, Audit Circle, Bhagalpur, Bihar.
4. Assistant Commissioner, CGST and Central Excise Commissionerate Patna - I, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Vaibhava Veer Shanker, Advocate
For the Respondent/s	:	Dr. K.N. Singh, ASG Mr. Anshuman Singh, Sr. SC, CGST and CX

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 23-04-2025

Re : I.A. No. 1 of 2025

Heard I.A. No. 1 of 2025 filed to recall the order dated 09.04.2025 insofar as imposition of cost of Rs. 2,000/-.

2. For the reasons stated in the application read with the affidavit, imposition of cost of Rs. 2,000/- stands recalled in the order dated 09.04.2025. I.A. No. 1 of 2025 stands allowed.

3. In the instant writ petition, petitioner has prayed for the following reliefs :

"i) To issue a rule NISI in the nature of writ of certiorari to quash and cancel the Final Order dated 23.08.2024 (Annexure-P/5) bearing Order no. 73/AC/Central Tax (Audit)/BGP/2024 wherein the respondent no. 3 has imposed a Service Tax liability of Rs. 3,69,973/- (Rs. Three Lakhs Sixty-Nine Thousand Nine Hundred and Seventy-Three) and has further imposed interest and penalty under the provisions of Finance Act, 1994 read with Section 174 of the Central Goods and Services Tax Act, 2017.

ii) To issue a rule NISI in the nature of writ of certiorari to quash and cancel the Demand cum Show Cause Notice dated 17.12.2020 bearing no. - C.No.II(39)196/CGST-PCD/SCN/SSU/2020-21/1907;

iii) To issue a rule NISI in the nature of writ of mandamus direction the respondents to return the amount deposited by the petitioner against the proceeding initiated vide Demand cum Show Cause Notice dated 17.12.2020 bearing no. - C.No.II(39)196/CGST-PCD/SCN/SSU/2020-21/1907;

iv) Any other writ / writs, order / orders, direction / directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case."

4. The petitioner was alleged to have evasion of tax for the year 2015 – 2016 and 2016 – 2017. In this regard, notice was issued under Section 73 of the Finance Act, 1994 on 21.12.2020. Thereafter, respondents remained silent till 18.01.2024. Notice was issued to the petitioner with a request to appear for personal hearing on 01.02.2024. The petitioner had appeared on 01.02.2024 and submitted his reply dated 31.01.2024. Thereafter, the concerned authority proceeded to pass order on 23.08.2024. Hence the present writ petition.

5. Learned counsel for the petitioner submitted that petitioner need not invoke appeal remedy for the reasons that initiation of notice dated 18.01.2024 till passing of the final order dated 23.08.2024 is beyond the jurisdiction of the concerned authority with reference to initial notice dated 21.12.2020. On this score, writ petition is maintainable. Further it is submitted that petitioner is stated to have paid a sum of Rs. 2,55,715/- vide Challan dated 05.02.2021 and a sum of Rs. 93,606/- on 21.03.2020 for the year 2016 – 2017. The only due is 20,652/- the same has not been appreciated in the final order.

6. *Per contra,* learned counsel for the respondents resisted the aforementioned contention and submitted that petitioner was not cooperating and he was suppressing certain material information resulted in delay in proceedings. Further on 18.01.2024, it is also submitted that during the intervening period from the date of service of notice dated 21.12.2020 under Section 73 of the Finance Act, 1994 and 18.01.2024 for personal appearance hearing notice, Covid-19 period is required to be taken into consideration. Covid-19 period has commenced in the month of March, 2020. When the respondents proceeded to initiate proceedings during Covid-19 period on 21.12.2020 there was no hurdle for them to proceed further in the matter during Covid-19 period. Be that as it may, even if Covid-19 period is taken into consideration, time could be excluded up to 28.02.2022. On the other hand, respondents have opened their eyes on 18.01.2024 so also there is delay of about 1 year 11 months. On the issue of delay in proceeding on behalf of the respondents, Co-ordinate Bench in the case of ***M/s Kanak Automobiles Private Limited Vs. Union of India & Others*** in **CWJC No. 18398 of 2023** examined with reference to the fact of the case read with the Covid-19 period. On this issue itself learned counsel for the petitioner has made out a case.

7. Accordingly, impugned order dated 23.08.2024 and notice dated 17.12.2020 stand set aside. Writ petition is allowed.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	01.05.2025
Transmission Date	