

(2020) 09 PAT CK 0334

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 7374, 7375 Of 2020

Shiv Kishor Construction Private
Limited

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision: Sept. 25, 2020

Acts Referred:

- Bihar Goods And Services Tax Act, 2017 - Section 9, 61, 74(1), 74(9)

Hon'ble Judges: Sanjay Karol, CJ; S. Kumar, J

Bench: Division Bench

Advocate: Ranjeet Kumar, Dr.K.N.Singh, Vikash Kumar, Alok Kumar Agrawal

Final Decision: Allowed

Judgement

Petitioner has prayed for the following relief(s):-

â€œ(i) For setting aside the order dated 31.01.2020 passed by the Deputy Commissioner of State Tax, Patna Central Circle. Bihar, Patna in exercise

of the jurisdiction conferred under Section 74(1) of the Bihar Goods and Services Tax Act, 2017, whereby it was observed that the petitioner in his

Return submitted in GSTR-3B for the month of April 2019 to June 2019 shown supply of Rs. 51974600.10 whereas as per TDS Return GSTR 2A the

supply appears to be Rs. 62534562.00 and in this manner the petitioner concealed/suppressed/evaded supply of Rs.10559962.00 and accordingly Tax,

Interest and Penalty was assessed for Rs. 3872760.00 The order is completely without jurisdiction as same was issued without complying the

mandatory provision, i.e, Section 61 of the Central/Bihar Goods and Services Tax Act, 2017. The order is bad in law on account of another fact that

the show cause notice under Section 73(5)/74(5) was ordered to be issued on 16.01.2020, but same was served through mail only on 25.01.2020, on

that day the father of the Learned Tax Consultant (Advocate) had died and next day i.e. 26th January was a national holiday it was impossible to file

reply in one day as the last date of submission of reply was 27.01.2020.

(ii) For setting aside the order dated 02.03.2020, issued by the Deputy Commissioner, State Tax, Patna Central Circle Patna, whereby final order has

been passed under Section 74 (9) of the Central Goods and Services Tax Act, 2017 and it has been ordered to issue DRC-07 of Rs. 39,21,914/- in spite

of the fact that the same authorities vide show cause notice (9) of the Central Goods and Services Tax Act, 2017 and it has been ordered to issue

DRC-07 of Rs. 39,21,914/- in spite of the fact that the same authorities vide show cause notice dated 08.02.2020, directed the petitioner to submit his

reply show cause on or before 07.03.2020 but the final order was passed 02.03.2020 itself, in gross violation of principle of natural justice. The order is

also bad in law and completely without jurisdiction for the reason of non-compliance of mandatory requirement of Section 61 of the Central/Bihar

Goods and Services Tax Act, 2017.

(iii) For setting aside the consequential DRC-07 dated 04.03.2020, issued by the office of the Deputy Commissioner of State Tax, Patna Central

Circle, Bihar, Patna whereby the petitioner has been directed to deposit the tax + interest + penalty, i.e., total Rs. 39,21,914/ by 07.03.2020, failing

which proceeding shall be initiated for recovery of the outstanding dues.

(iv) The Petitioner further prays that after setting aside the aforementioned impugned orders, the matter be remanded back to the respondents

authorities with a direction to comply the mandatory requirement envisaged under Section 61 of the Central / Bihar Goods and Service Tax Act, 2017,

as the whole disputes related to the scrutiny of return and the matter may be resolved in exercise of jurisdiction under Section 61 of the Act, as the

petitioner has not at all evaded /concealed / suppressed its supply, and the difference amount of gross supply including Petrol and Diesel and all taxes

added, which are Non-GST item as per Section 9 of the Act, 2017, read with the Curious case of Non-GST Goods available on website of Taxguru.in.

Learned counsel for the State Sri Vikash Kumar has been extremely fair in his submission.

It is not disputed that one of the impugned orders stands passed in violation of principles of natural justice.

Impugned order dated 2nd of March, 2020 is passed by the Deputy Commissioner of State Tax, Patna Central Circle, Bihar, Patna who issued a

notice asking the petitioner to show cause by a particular date. However, for unexplained reasons and circumstances, without any prior intimation or

knowledge, the matter was preponed and without affording any opportunity of hearing, decide, holding the view of the revenue. The order does entail

civil and pecuniary consequences, causing prejudice to the petitioner. On all fours, principles of natural justice stand violated.

As such on this short ground alone, the impugned order dated 02.03.2020 and the resultant order dated 04.03.2020 passed by the Deputy

Commissioner of State Tax, Patna Circle, Bihar, Patna are quashed and set aside with the matter remanded back to the authority for consideration

afresh.

We direct the petitioner to appear before the said authority on 12.10.2020 at 10.30 A.M. who shall, after complying with the principles of natural

justice, pass a fresh order. It shall be open to the petitioner to raise all the issues, including the one agitated in the present petition, which the Officer

shall be obliged to decide the same.

With the aforesaid observation/direction, the writ petition stands allowed.