

(2022) 01 PAT CK 0042

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 17325 Of 2021

Shiv Kishor Construction Private
Limited

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision: Jan. 12, 2022

Acts Referred:

- Bihar Goods and Services Tax Act, 2017 - Section 61, 73, 73(9)
- Central Goods and Services Tax Act, 2017 - Section 61

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

Bench: Division Bench

Advocate: Ranjeet Kumar, Dr. K N Singh, Anshuman Singh, Vivek Prasad

Final Decision: Disposed Of

Judgement

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

i. For setting aside the show cause notice dated 31.12.2020 and consequential DRC 01 dated 31.12.2020 for the period April 2019 to March' 2020

issued by the Assistant Commissioner of State Tax, Patna Central Circle, Bihar, Patna in exercise of the jurisdiction conferred under Section 73 of the

Bihar Goods and Services Tax Act, 2017, whereby Tax, and penalty of Rs. 3666479.54/- was calculated and the petitioner was asked to submit reply

by 30.01.2021 . The Â show cause 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.

ii. For setting aside the order dated 09.01.2021 issued by the Assistant Commissioner, State Tax, Patna Central Circle, Patna, whereby final order has

been passed under Section 73 (9) of the Central Goods and Services Tax Act, 2017 and it has been ordered to issue DRC-07 of Rs. 2486750.26/- in

spite of the fact that the same authorities vide show cause notice dated 31.12.2020, directed the petitioner to submit his reply / show cause on

or before 31.01.2021 but the final order was passed 09.01.2021 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 consequential DRC " 07 dated 13.01.2021 issued the signature of Assistant Commissioner State Tax, Patna Central Circle, Bihar,

Patna for the period April' 2019 to March'2020 whereby the petitioner was directed to pay Rs. 24,86,750.26 as a tax and penalty.

iv.

v. 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 Patrol 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.

vi. For any other relief for which the petitioner may be deemed entitled to.

In view of the stand taken by the respondents in the counter affidavit and more specifically in para -5 thereof, which is reproduced as under:-

That it is important to mention here that clerical mistake the order dated 09.01.2021 and the demand Notice DRC-07 has been uploaded on the GSM

Portal with the Reference number of second proceeding which is auto picked by system due to some technical error and only due to this technical

error the petitioner has filed the present writ petition without bringing the same into the knowledge of the answering respondent.

Shri Vivek Prasad, learned counsel for the Revenue fairly states that the matter be remanded to the authorities for consideration afresh.

We notice that the statutory period enabling the petitioner to show cause was not afforded and also there was a technical error as admitted by the

Revenue. Hence, the impugned orders dated 09.01.2021 (Annexure-5) and 13.01.2021 (Annexure-6) need to be quashed.

Ordered accordingly.

The petition is disposed of with further direction to the petitioner to appear before the authority concerned on 27.01.2022 at 10:30 A.M.

The petitioner shall place entire material in support of his contention within a period of two weeks thereafter.

Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(I) The concerned Authority shall decide the case on merits expeditiously, preferably within a period of three months from the date of appearance of the petitioner;

The concerned Authority shall pass a speaking order assigning reasons, copy whereof shall be supplied to the parties;

Liberty reserved to the petitioner to challenge the order, if required and desired;

Equally, liberty reserved to the parties to take recourse to such other remedies as are otherwise available in accordance with law;

We are hopeful that as and when petitioner takes recourse to such remedies, before the appropriate forum, the same shall be dealt with, in accordance

with law, with a reasonable dispatch;

We have not expressed any opinion on merits and all issues are left open;

If possible, proceedings during the time of current Pandemic [Covid-19] be conducted through digital mode;

The instant petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, also stands disposed of.

Learned counsel for the respondents undertakes to communicate the order to the appropriate authority through electronic mode.