

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11936 of 2024

=====

Pankaj Rai a proprietorship concern having its office at Mathiya Mohalla, Civil Lines P.O.- Buxar, P.S.- Bauxar, Dist.- Buxar 802101 through authorised signatory Sima Rai, Gender- Female, aged about 50 years, wife of Late Pankaj Rai, Resident of Purab Tola, Korantadih Ujar, Post- Korantadih, Police Station - Korantadih, Dist. - Ballia, Uttar Pradesh- 277501.

... .. Petitioner

Versus

1. The Union of India through the Ministry of Finance, New Delhi- 110001.
2. The Chief Commissioner of CGST and CX, Ranchi Zone, Patna.
3. The Superintendent of CGST and CX- Range, Buxar- 802101.
4. The Assistant Commissioner of CGST and CX, Patna West Division, Karpoori Thakur Sadan, Ashiana Digha Road, Patna- 800025.
5. The Assistant Commissioner of CGST and C.EX, Outer Cicle Road Bistupur, Jamshedpur, Jharkhand - 831001.

... .. Respondents

=====

Appearance :

For the Petitioner	:	Mr. Bijay Kumar Gupta, Advocate
For the CGST & CX	:	Dr. K.N. Singh, Additional Solicitor General
		Mr. Anshuman Singh, Senior SC
		Mr. Shivaditya Dhari Sinha, Advocate
		Mr. Alok Kumar, Advocate

=====

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

Date : 05-05-2025

Heard Mr. Bijay Kumar Gupta, learned counsel for the petitioner and Dr. K.N. Singh, learned ASG assisted by Mr. Anshuman Singh, learned Senior Standing Counsel for the CGST and CX.

2. In the present writ application, the petitioner has prayed for the following reliefs:-



“i) The show cause notice bearing No.:- C. No. V(18)379/Pankaj Rai/SCN/PD-W/2021-22/1585 dated 11.10.2021 (as contained in Annexure-P-2) issued by the Respondent No.-4 for Service tax amounting to Rs.13,07,700 (Thirteen lakhs Seven Thousand Seven hundred only) for the Period April 2016 to June 2017/- under proviso to sub section (1) of Section 73 Finance Act, 1994 read with S 174 of the CGST Act, 2017, applicable interest under S. 75 Finance Act, 1994 read with S 174 of the CGST Act, 2017, Penalty under Section 78 Finance Act, 1994 read with S 174 of the CGST Act, 2017 for, Penalty under Section 77(1)(c)(ii) Finance Act, 1994 read with S 174 of the CGST Act, 2017, penalty under section 77(1)(a) & Penalty under section 77(1)(c)(ii) Finance Act, 1994 read with S 174 of the CGST Act, 2017 be quashed as the show cause notice is time barred in view of the provision of Section 73(1) of Finance Act, 1994 wherein there is time limit of 30 months to issue notice and extended period of limitation is not applicable in this case.

ii) The Order in Original bearing No.-AC/JSR/ST-120/2024 dated 13.05.2024 (as contained in Annexure-P-5) passed by the Respondent No.-5 demanding Service tax amounting to Rs.13,07,700 (Thirteen lakhs Seven Thousand Seven hundred only) under sub section (2) to Section 73 of Chapter V of the Finance Act, 1994 read with Section 174 of the Central Goods and Services Tax Act, 2017 for the period April 2016 to June 2017 and Penalty of similar amount along with



applicable interest be quashed as a demand order issued by Respondent No 5 is violative of statutory time limit of one year provided under Sub-section (4B) of Section 73 of Finance Act, 1994 as Respondent No. 5 failed to adjudicate the issue within one year from issuance of show cause notice i.e. 11.10.2021 (Annexure-P2) and the demand order was passed on 13.05.2024 (Annex-P-5) after lapse of more than 2 years 7 months.

iii) For issuing a writ in the nature of prohibition to direct Respondent No. 03, 04 and No.-5 not to take any coercive step against the petitioner as the demand order was not adjudicated within one year of issuance of show cause notice in violation of statutory limit of one year as provided in Sub-section (4B) of Section 73 of Finance Act, 1994 and demand order was passed without jurisdiction (Annex P-5).

iv) For granting any other relief (s) to which the petitioner is otherwise found entitled to in accordance with law.”

Brief Facts of the Case

3. It is the case of the petitioner that on 11.05.2020, the Respondent No. 3 issued a notice to the petitioner's Late Husband Pankaj Rai alleging non-payment of service tax for the financial year 2016-17 on the basis of gross value of turnover shown in the income tax return as credited under Section 194C, 194J and 194H and demanded various documentary evidences shown in the notice



within 15 days. Thereafter, a reminder notice was also issued. The husband of the petitioner submitted his reply on 06.09.2020, however, his submissions were ignored and not acknowledged.

4. The further case of the petitioner is that the petitioner's Late husband was issued a Show Cause Notice (in short 'SCN') bearing C. No. V(18)379/Pankaj Rai/SCN/PD-W/21-22/1585 dated 11.10.2021 (Annexure 'P2') by Respondent No. 4 claiming a service tax amounting to Rs.13,07,700/- for the period from April, 2016 to June, 2017. The notice to show cause was issued under proviso to sub-section (1) of Section 73 of the Finance Act, 1994 (hereinafter referred to as the 'Act of 1994') read with Section 174 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act'). The Respondent No. 4 alleged that there was a willful suppression and misrepresentation of facts, therefore, the extended period of limitation of five years was invoked.

5. It is stated that the Order-in-Original bearing no. AC/JSR/ST-120/2024 dated 13.05.2024 (Annexure 'P5') has been issued by Respondent No. 5 who received the file on transfer of records. Respondent No. 5 has demanded the aforementioned tax amount and has imposed penalty of some amount along with applicable interest.



Submissions on behalf of the Petitioner

6. Learned counsel for the petitioner submits that the order as contained in Annexure 'P5' to the writ application is liable to be set aside on the solitary ground that the impugned order has been passed after about three years from the date of issuance of the show cause notice. In this connection, learned counsel has placed before this Court sub-section (4B) of Section 73 of the Act of 1994, particularly, clause (b) thereof. It is submitted that sub-section (4B) was inserted in the statute book with effect from 06.08.2014 vide Finance Act No. 2 of 2014. It is submitted that the intention behind insertion of sub-section (4B) under Section 73 of the Act of 1994 was to determine the amount of service tax which were due under sub-section (2) expeditiously and that would not only benefit the revenue but would also end the uncertainty in the mind of the tax payers.

Consideration

7. When this case was taken up for consideration on 28.04.2025, this Court having taken notice of the submissions of learned counsel for the petitioner as also the judgments of the learned co-ordinate Bench of this Court in cases of **M/s Kanak Automobiles Private Limited Vs. The Union of India and Others (CWJC No. 18398 of 2023 dated 04.04.2024)** and Pawan



Kumar Upmanyu Vs. The Union of India 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, Sarbidipur, Kahalgaon, Bhagalpur Vs. The Union of India and Another (CWJC No. 16772 of 2024 dated 17.04.2025)**, called upon the learned ASG to take a plea. Learned ASG requested this Court for some time in order to obtain the records of the case from the Department and to produce the same to satisfy this Court with regard to the steps taken during two years' period i.e. between 29.10.2021 and 18.12.2023.

8. We have noticed in the order dated 28.04.2025 that the 'SCN' was issued on 11.10.2021 and a response on behalf of the proprietorship concern (the petitioner) was submitted on 20.10.2021 but for more than two years, the respondent authority of the Department remained sitting over the matter.

9. Today, the records have been produced by learned ASG. On a bare perusal of the records, it would appear that a draft 'SCN' was placed before the competent authority on 08.10.2024 which was ultimately approved by the Assistant Commissioner on 11.10.2021. Thereafter, no action at all has been taken in the file. After the said approval of the 'SCN', the only order which is available on the record is the order dated 13.05.2024. In between



11.10.2021 and 13.05.2024, there is no movement of file, no date was fixed and it may be safely recorded that the respondent authorities even though received the reply of the petitioner, as it appears from the seal and the date affixed on the reply petition kept on the record, on 02.11.2021, even that receipt of reply has not been recorded in the ordersheet. At the time of final order only, the Respondent No. 5 has recorded that “I have carefully gone through show cause notice, relevant case records and the noticee’s submissions.”

10. This Court has found from the records that in the counter affidavit filed on behalf of the respondents, there is no whisper from their end as to why after more than two years, a notice of personal hearing was issued on 18.12.2023.

11. In the case of **M/s Kanak Automobiles** (supra), the learned co-ordinate Bench of this Court has, though, held that the period prescribed in clause (b) of sub-section (4B) of Section 73 of the Finance Act cannot be taken as an absolute mandate that the proceeding should be completed within one year from the notice but at the same time, the learned co-ordinate Bench has recorded “.. but it requires the statutory authority to take all possible steps, so to do and conclude the proceedings within an year. No steps were taken in the entire one year period, which results in the



frustration of the goal of expediency as required statutorily. We hence find that the proceedings cannot be continued.”

12. The judgment of the learned co-ordinate Bench in **M/s Kanak Automobiles** (supra) was challenged before the Hon’ble Supreme Court in SLP (Civil) Diary No. 54313/2024 decided on 03.01.202, however, the Hon’ble Supreme Court refused to interfere with the judgment of the learned co-ordinate Bench in **M/s Kanak Automobiles** (supra) and held that it is not laying down a law but considering the quantum involved, the Hon’ble Supreme Court was not inclined to interfere with the judgment.

13. This Court has taken a view that whether it was possible to determine the service tax within the period of one year or not is required to be determined in the facts of the case. In the case of **M/s Power Spectrum** (supra), this Court had occasion to consider a similar plea where the Order-in-Original was passed after five years of the issuance of ‘SCN’. This Court was persuaded in the facts of the case and by citing two judgments 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** and **Sunder System Pvt. Ltd. v. Union of India and Others** reported in **2020 (33) G.S.T.L. 621 (Del)**. **14.** This Court would reproduce



the relevant paragraph nos. '16' and '17' from the judgment of **M/s**

Power Spectrum (supra) hereunder for a ready reference:-

“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)””

14. Learned counsel for the petitioner has further submitted that in a recent judgment, the another learned co-ordinate Bench of this Court has in the case of **Pawan Kumar Upmanyu** (supra) set aside the order of the respondents finding the delay beyond one year for no reason explained and the quantum of the tax involved. The relevant paragraph of the judgment in the case of **Pawan Kumar Upmanyu** (supra) is being extracted hereunder:-

“3. Having regard to the quantum of tax involved in the present case and M/S Kanak Automobiles Private Limited are concerned, in Kanak Automobiles it is Rs. 86 Lakh whereas in the present case it is Rs. 6,33,879/-, therefore, we intend to dispose of in the light of Kanak Automobile case read with Hon’ble Supreme Court decision dated 03.01.2025.”

15. Since we have noticed from the records that there was no movement at all of the file for two years and the matter remained pending at the end of the taxing authority, there being no reason shown that it was not possible to determine the liability of the petitioner within the period of one year, we are of the considered opinion that the present case would be covered by the judgments of this Court as discussed hereinabove.



16. This Court, therefore, sets aside the impugned order dated 13.05.2024 (Annexure ‘P5’) and the consequent demands raised against the petitioner.

17. While parting with this case, this Court must place on record it’s concern for the manner in which the case was kept pending without any movement of file for more than two years. What went wrong on the part of the Department is required to be looked into by the Chief Commissioner of CGST and CX (Respondent No. 2). The Respondent No. 2 is expected to look into the failure which has taken place in this matter, even as this Court has been coming across several matters in which similar situation exist. What action may be taken by Respondent No. 2 is left to his wisdom.

18. This writ application is allowed.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

lekhi/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06.05.2025
Transmission Date	

