

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9105 of 2024

=====

Anil Kumar Singh S/o Sri Devendra Prasad Singh, R/o Argara Chowk,
Binodpur, P.O. and P.S. Katihar, Katihar (Bihar), Pin-840105

... .. Petitioner

Versus

1. The Union of India through its Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
2. Assistant Commissioner, CGST and CX, Purnea Division, Purnea.
3. The State of Bihar through the Principal Secretary, Rural Works Department, Vishveshwarya Bhawan, Patna.
4. Executive Engineer, Rural Works Department, Work Division, Manihari, Katihar.
5. Executive Engineer, Rural Works Department, Work Division, Barsoi, Katihar.

... .. Respondents

=====

Appearance :

For the Petitioner/s	:	Mr. Ramesh Kumar Agrawal, Advocate Mr. Sanjeev Kumar, Advocate
For the Respondent/s	:	Dr. K. N. Singh, ASG Mr. Anshuman Singh, Sr. SC

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 18-04-2025

In this writ application, the petitioner has prayed for the following reliefs:-

“i. For the issuance of appropriate writ/writs, order/orders, direction/directions in the nature of certiorari to quash the



Demand cum show cause notice bearing no. C.No. V(44)01/SCN/Pur.Div/Anil Kumar Singh/2022/506 dated 19.04.2022 (Annexure P/2) issued by the Respondent Assistant Commissioner whereby and where under the Petitioner was asked to file show cause as to why the Service Tax of Rs. 3,05,794 /-(Rupees Three Lakh Five Thousand Seven hundred ninety four only) on the amount of Rs. 20,38,629/- deducted as Royalty by the Government of Bihar from the Petitioner's Bills in the financial year 2016-17 should not be demanded and recovered along with the applicable rate of interest and applicable penalties under the provisions of Finance Act, 1994 read with the Section 174 of the Central Goods and Service Tax Act, 2017.

ii. For the issuance of appropriate writ/writs, order/orders, direction/directions in the nature of Certiorari to quash the order no. 01/2023-24/ST/AC/PURNEA dated 31.10.2023 (Annexure P/4) passed by the Respondent Assistant Commissioner confirming its aforesaid demand cum show cause notice dated 19.04.2022.

iii. For any other relief/reliefs that in the facts and circumstances of the case would do complete justice to the Petitioner.”



Brief Facts of the Case

2. It is the case of the petitioner that the petitioner is a Government Contractor, engaged in the construction and maintenance of roads and also in construction of buildings such as Panchayat Bhawan etc. in the district of Katihar.

3. The petitioner had purchased sand, soil, chips, bitumen, bricks etc. directly from the market for the use in the said works. No good has been supplied by the Government for use in the execution of the works contract. The petitioner does not hold any mining lease from the State Government or any other authority.

4. It is stated that the respondent-Government, Department has deducted a sum of Rs.20,38,629/- as royalty from the petitioner's bills during the period 2016-17. Payment certificates issued by the respondent Executive Engineers clearly show that the royalty amount was deducted from the petitioner's bill.

5. The petitioner is challenging a demand-cum-show cause notice and demand order issued by the Assistant Commissioner, CGST & CX, Purnea Division (respondent no. 2). A copy of the demand-cum-show cause notice has been brought on record as Annexure 'P/2' to the writ application.



6. From the Annexure 'P/2', it appears that as per data sharing policy of Government of India, Income Tax Department appraised CGST & CX Officer that this petitioner is a service provider and has received Rs.5,86,23,015/- during the financial year 2016-17 from their different parties. The Income Tax Department indicated that there may have been evasion of service tax on the part of the said noticee, therefore, a verification process was initiated by the Service Tax Department i.e. CGST & CX, Range Katihar and the Superintendent of Central GGST, Range Katihar vide his letters dated 13.04.2021, 06.08.2021 and 23.08.2021. The respondent authorities requested the petitioner to furnish his reply/ certain documents/ records and information. In response, the petitioner submitted his reply letter dated 23.09.2021 along with certain documents and submitted that service rendered by them during the period 2016-17 were exempted from service tax.

7. The submission of the petitioner has been examined by the Department and it was found that the petitioner being a Government Contractor was engaged in construction and maintenance of road etc. therefore, his



activity would be covered under Mega Exemption Notification No. 25/2012-ST dated 20.06.2012. In such circumstance, no service tax is leviable on the said activity but upon perusal of the payment certificates issued by the Government bodies and/or audited balancesheet of the financial year 2016-17, it was revealed that an amount of Rs.20,38,629/- have been paid by the petitioner during the financial year 2016-17 to the Government as “Royalty”. The respondent no. 2 found that the said royalty is nothing but an amount paid to the Government or deducted by the Government for giving the “Permission for license” for using natural resources of materials/adjacent land in the State as per norms and rate. It is, thus, an assignment of right to use any natural resource which is a service taxable w.e.f. 01.04.2016 by virtue of Notification No. 22/2016-ST dated 13.04.2016.

8. Respondent no. 2 took a view that the responsibility for payment of service tax in respect of such services by the Government has been on the business entity receiving the service on a Reverse Charge Mechanism (‘RCM’) Basis . The Notification No. 30/2012-ST dated June



20, 2012 mandated service recipient to discharge service tax under RCM.

9. Respondent no. 2 has mentioned in Annexure 'P/2' that under Notification No. 30/2012, the taxability was limited to the "support services" only but the term "by way of support services" as occurring in the Notification No. 30/2012 was omitted vide Notification No. 18/2016-Service Tax dated 01.03.2016 and thus Negative list under Section 66D of the Act stood amended. In the light of the amended Section 66D, the service tax became leviable on "any service provided by the Government" (excluding specific services) which was earlier limited to 'support services' and is payable by service recipient under RCM vide Notification No. 30/2012 dated June 20, 2012 as amended.

10. As per Annexure 'P/2', the petitioner had not discharged his service tax liability upon royalty and he had not declared the gross amount of royalty in his ST-3 return nor discharged his service tax liability which resulted into non-payment of service amounting to Rs.3,05,794/-. Taking it as a contravention of the statutory provision, it has been alleged against the petitioner that he suppressed the taxable value and



did not pay the due service tax, this was done with the sole intent to evade payment of service tax during the said period.

11. Annexure 'P/2' mentions it as a deliberate act of suppression of facts, willful mis-statement and contravention of provision of Sections 67 and 68 of the Finance Act, 1994 and Rule '6' of the Service Tax Rule, 1994 with sole intent to evade payment of service tax. The clause of extended period under proviso to Section 73(1) of the Finance Act, 1994 read with Section 174 of the CGST Act, 2017 would be invoked for recovery of the service tax as above.

12. The petitioner was called upon to show cause as to why (i) service tax including cess amounting to Rs.3,05,794/- not paid by him should not be demanded and recovered from him under proviso to Section 73(1) of Chapter V of the Finance Act, 1994 read with Section 174 of the CGST Act, (ii) interest at the applicable rate on the amount as demanded above should not be demanded and recovered under the provisions of Section 174 of CGST Act and (iii) penalty should not be imposed upon him under proviso to Section 78 of Chapter V of the Finance Act, 1994 read with



Section 174 of the CGST Act for willful suppression of material facts with intent to evade payment of service tax.

13. It appears that the petitioner filed his reply against the show cause notice and raised an issue that no service tax would be payable by him in connection with the work for construction of road and buildings of the Government. He referred Notification No. 25/2012 of the service tax.

14. The respondent no. 2, however, passed the impugned order by which he has held that the petitioner would be liable to pay the service tax, interest and penalty as per SCN (Annexure 'P/2').

Submissions on behalf of the Petitioner

15. In this Court, learned counsel for the petitioner has submitted that the impugned notice dated 19.04.2022 is barred by limitation prescribed under Section 73(1) of the Finance Act, 1994. The notice having been issued after the prescribed period of 18 months from the relevant date is bad in law and the proceeding initiated on that basis would stand vitiated, hence, the demand-cum-show cause notice (Annexure



‘P/2’) and the subsequent confirmation of the same vide Annexure ‘P/4’ would be liable to be quashed.

16. Learned counsel submits that the respondent-Assistant Commissioner has issued the impugned show-cause notice on 19.04.2022 for the alleged service provided by the Government in the Financial Year 2016-17. The extended period of five years has been invoked alleging fraud, collusion, wilful mis-statement, suppression of facts and contravention of the provisions of the Finance Act, 1994 but on a bare perusal of the entire facts and the materials, it would appear that the case of the petitioner would not fall in any of the categories which would permit availment of extended period of limitation.

17. Learned counsel has relied upon the judgment of the Hon’ble Supreme Court in the case of **Pushpam Pharmaceuticals Company versus Collector of Central Excise, Bombay** reported in **1995 Supp (3) SCC 462** in which it has been held that mere omission is not suppression and there must be a deliberate act.



Submissions on behalf of CGST and CX

18. In opposition, learned ASG representing CGST and CX has submitted that in this case, the show cause notice ('SCN') (Annexure 'P/2') has been issued on 19.04.2022. Since last date for filing the ST-3 return for the second half of the financial year 2016-17 was 25.04.2017, the last date to issue the SCN for the financial year 2016-17 by invoking extending period was 24.04.2022 and the demand-cum-show cause notice was already issued on 19.04.2022 by respondent no. 2. It is, thus, his submission that the 'SCN' was issued within the prescribed period, hence, it is not time barred.

19. Learned ASG submits that the action of Respondent no. 2 is wholly within jurisdiction and is justified in the eyes of law. The petitioner had not declared its activity during financial year 2016-17 to the Department. He did not register himself under the service tax. This shows his deliberate intent to evade payment of service tax on royalty which he paid in lieu of receipt of services from Government. Further, he resorted to suppression of facts by wilfully



contravention of the provisions of the said Act as well as Service Tax Rules, 1994.

20. Learned ASG submits that the petitioner is liable to pay the service tax in the present case. Exemption Notification No. 22/2016-Service Tax was issued on 13.04.2016 which inserted serial no. 61 in Notification No. 25/2012-Service Tax dated 20.06.2012. The said Notification provided that the services provided by Government or local authority by way of assignment of right to use any natural resource were made exempted from levy of service tax, provided that such right to use was assigned by the Government or the local authority before 1st April, 2016 and therefore, such services would be subjected to service tax levy if the same are provided on or after 1st April, 2016. Thus, the activity of assignment of rights to use natural resources is taxable services provided by the Government and in this case the petitioner who is the service recepient is liable to pay service tax upon it under RCM as per provision of serial no. '6' of table mentioned in Notification No. 30/2012-Service Tax dated 20.06.2012 as amended w.e.f. 01.04.2016 vide Notification No. 18/2016-Service Tax dated 01.03.2016.



Consideration

21. We have heard learned counsel for the petitioner as well as learned ASG for the CGST and CX. So far as the payability of service tax on the payment of royalty is concerned, the same is not in question. The question which arises for consideration in this case is as to whether the respondent no. 2 has acted within his jurisdiction to invoke the extended period of limitation under Section 73 of the Finance Act, 1994. Section 73(1) of the Finance Act, 1994 reads as under:-

“**73(1)** Where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded, Central Excise Officer may, within ¹[²[thirty months]] from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice :

PROVIDED that where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of —

- (a) fraud; or
- (b) collusion; or
- (c) wilful mis-statement; or
- (d) suppression of facts; or
- (e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax, by the person chargeable with the service tax or his agent, the provisions of this sub-section shall have effect, as if, for the words ¹[²[thirty months]], the words “five years” had been substituted. ”

1. Substituted for “one year” by Finance Act, 2012 (23 of 2012), dt.28-5-2012.
2. Substituted for “eighteen months” by Finance Act, 2016 (28 of 2016), dt.14-5-2016.



22. It is evident from a reading of Sub-Section (1) of Section 73 that the prescribed period of limitation for serving a notice on the person chargeable with service tax is thirty months from the relevant date. The words 'thirty months' have been substituted for 'eighteen months' by Finance Act, 2016 (28 of 2016), dt.14-5-2016. Proviso to Sub-Section (1) of Section 73, however, permits invocation of extended period of limitation of five years in the cases where service tax has not been paid by reason of fraud or collusion or wilful mis-statement or suppression of facts or contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax, by the person chargeable with the service tax.

23. One of the arguments which has been raised on behalf of the petitioner is that the respondent while deducting royalty amount had not issued any invoice against the alleged service provided by the Government Department. It is the contention of the petitioner that had the invoice been issued, the petitioner would have known that the said royalty is against service rendered by the Government, which is taxable and the rate of tax at which it was required to be paid. In this



connection, Rule 4A of the Service Tax Rules has been referred to. We reproduce Rule 4A of the Service Tax Rules, 1994 hereunder:-

“⁸[4A. Taxable service to be provided or credit to be distributed on invoice, bill or challan-(1) Every person providing taxable service shall, ⁹[not later than ¹⁰[thirty days] from the date of ¹¹[completion of] such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier] issue an invoice, a bill or, as the case may be, a challan signed by such person or a person authorized by him ¹²[in respect of taxable service] ¹³[provided or agreed to be provided] and such invoice, bill or, as the case may be, challan shall be serially numbered and shall contain the following, namely :-

- (i) the name, address and the registration number of such person;
- (ii) the name and address of the person receiving taxable service;
- ¹⁴[(iii) description and value of taxable service provided or agreed to be provided; and]
- (iv) the service tax payable thereon:

8. Inserted by Notification No. 11/2004-ST, dated 10.09.2004.

9. Inserted (w.e.f. 01.04.2005) by Notification No. 07/2005-ST, dated 01.03.2005.

11. Substituted (w.e.f.1.04.2011) by Notification No.26/2011-Service Tax dated 31.03.2011.

12. [Substituted (w.e.f. 01.04.2005) by Notification No. 07/2005-ST, dated 01.03.2005.

13. [Substituted (w.e.f.1.07.2012) by Notification No.36/2012-Service Tax., dated 20.06.2012.]

14. Substituted (w.e.f.1.07.2012) by Notification No.36/2012-Service Tax., dated 20.06.2012.



24. In paragraph '21' of the writ application, the petitioner has stated that as per Rule 4A of the Service Tax Rules, 1994 inserted on 10.09.2004, it is mandatory that every person providing taxable service shall issue an invoice, a bill or a challan on receipt of payment for the taxable service. No invoice has been issued to the petitioner for the royalty deducted from its bills by the State Government.

25. There is no contest to the averment in paragraph '21' of the writ application. The Executive Engineer, Rural Works Department, Manihari has filed a counter affidavit but the contention of the petitioner based on Rule 4A of the Service Tax Rules has not been denied. In fact, there is an admission of respondent no. 4 that no invoice has been issued to the petitioner for the royalty deducted from its bill by the State Government. Paragraph '8' of the counter affidavit of respondent no. 4 reads as under:-

“8. That the further grievance of the petitioner is that as per Rule 4A of the Service Tax Rules, 1994, inserted on 10.09.2004, it is mandated that every person providing taxable service shall issue an invoice, a bill, of a



challan on receipt of payment for the taxable service provided by it. No invoice has been issued to the Petitioner for the royalty deducted from its bill by the State Government. The Petitioner has worked for the Respondent Executive Engineer and has received various payment from it in the FY 2016-17. Though, the Respondent Executive Engineer has deducted royalty from the Petitioner's bill, they have not issued any bill of invoice w.r.t. the royalty deducted by it from the Petitioner's bill for the Work Contract executed by it during the FY 2016-17.”

26. In the case of **Pushpam Pharmaceuticals Company** (supra), the Hon'ble Supreme Court has dealt with the issue of wilful suppression. Paragraph '4' of the judgment would be relevant to rely upon in the instance case. We reproduce paragraph '4' of the judgment as under:-

“4. Section 11-A empowers the Department to reopen proceedings if the levy has been short-levied or not



levied within six months from the relevant date. But the proviso carves out an exception and permits the authority to exercise this power within five years from the relevant date in the circumstances mentioned in the proviso, one of it being suppression of facts. The meaning of the word both in law and even otherwise is well known. In normal understanding it is not different that what is explained in various dictionaries unless of course the context in which it has been used indicates otherwise. A perusal of the proviso indicates that it has been used in company of such strong words as fraud, collusion or wilful default. In fact it is the mildest expression used in the proviso. Yet the surroundings in which it has been used it has to be construed strictly. It does not mean any omission. The act must be deliberate. In taxation, it can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression.”



27. We have noticed that in this case, the petitioner is a Government Contractor and the services availed by him has been found exempted under the Mega Exemption Notification No. 25 of 2012. In fact, Annexure 'P/2' clearly admits that the activity of the petitioner is exempted under Mega Exemption Notification No. 25/2012 dated 20.06.2012 and as such no service tax is leviable on the said activity. This Court finds much force in the submission of the petitioner that had the Government Department issued invoice as required under Rule 4A of the Service Tax Rules, 1994, he would have come to know the requirement of payment of service tax and the rate at which it was required to be paid. The relevant Rule which we have taken note of hereinabove is mandatory as it casts a duty upon every person liable for paying the service tax to make an application to the concerned Superintendent of Central Excise in Form ST-1 for registration within the 30 days from the date in which the service tax under Section 66B of the Finance Act is levied. Proviso to Sub-Rule (1) of Rule 4 further says that where a person commences the business of



providing a taxable service after such service has been levied, he shall make an application for registration within a period of thirty days from the date of such commencement. Thus, the plea of the respondent that the petitioner had not taken registration of the service tax would alone not be a reason to believe that he has committed a fraud or has wilfully suppressed his liability to pay the tax. Rule 4A casts a duty upon every person providing taxable service (not later than thirty days from the date of completion of such taxable service whichever is earlier to issue an invoice, a bill or as the case may be a challan signed by such person or a person authorised by him in respect of such taxable service provided or agreed to be provided. The Challan has to contain the name, address of the registration number of such person and name and address of the person receiving taxable service. It will also contain the description and value of taxable service provided or agreed to be provided and the service tax payable thereon. In this case, admittedly, the respondent no. 4 did not issue any invoice, bill or challan.

28. In the opinion of this Court, it is not one of those cases in which the petitioner may be said to have committed a



fraud or acted with an intention to evade the service tax. The show cause (Annexure ‘P/2’) is barred by limitation. The benefit of extended period of limitation would not be available to the respondent no. 2. Hence, the SCN as contained in Annexure ‘P/2’ and the consequent order confirming the demand vide Annexure ‘P/4’ to the writ application are quashed.

29. This writ application is allowed.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

Rishi/-

AFR/NAFR	AFR
CAV DATE	27.03.2025
Uploading Date	18.04.2025
Transmission Date	

