

TAX INFO

Dated: 14.10.2020

Latest update on GST Law: Information regarding **Issuing show cause notice u/s 73/74 of CGST Act without complying with requirements of Section 61 is not tenable** based on the **Judgement issued by Patna High Court**.

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Issuing show cause notice u/s 73/74 of CGST Act without complying with requirements of Section 61 is not tenable

Name of Petitioner	Shiv Kishor Construction Private Limited
Name of Respondent	The Union of India
Name of Court	Patna High Court
Appeal Number	Civil Writ Jurisdiction Case No.7144 of 2020
Date of Judgement	13/07/2020

The petitioner in his Return submitted in GSTR-3B for the month of October 2018 to March 2019 shown supply of Rs. 78594038.40 whereby as per TDS Return GSTR 2A the supply appears to be Rs. 99116990.00 and in this manner the petitioner concealed/suppressed/evaded supply of Rs. 20511951.60 and accordingly Tax, Interest and Penalty was assessed for Rs. 5440224.00. The SCN issued Section 73(5) / 74(5) on 16.01.2020, but same was served through mail only on 25.01.2020, on that day the father of the 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.

The petitioner challenged the order dated 02.03.2020 issued by the respondent under Section 74(9) of the Act, in spite of the fact that the same authorities vide SCN directed the petitioner to submit his reply on or before 07.03.2020 but the final order was passed on 02.03.2020 itself, in gross violation of principle of natural justice. The petitioner prayed for setting aside the consequential DRC-07 dated 04.03.2020, whereby he was directed to deposit the tax+ interest+ penalty.

The Hon'ble High Court allowed the petition and held that principles of natural justice are violated. Accordingly quashed and set aside impugned orders dated 02.03.2020 and 04.03.2020, and directed the petitioner to appear before the authority on 29.07.2020 who shall, after complying with the principles of natural justice, pass a fresh order.

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