

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18049 of 2024

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M/S Great Eastern Hire Purchase Private Limited, a Private Limited Company having GSTIN-10AABCG1740K1Z4 and its office at 1st Floor, Ganesh Dutt Complex New Dak Bunglow Road P.S.- Gandhi Maidan, P.O- G.P.O Patna - 800001 through its Authorised Director Sri Mahendra Kumar Baid, Gender- Male, aged about 68 years, Son of Punam Chand Baid, Resident of 4F, Mohalla Moti Lal Nehru Road, Post Office - Sarat Bose Road Police Station- Rabindra Sarobar, Kolkatta, West Bengal -700029

... .. Petitioner

Versus

1. The State of Bihar through The Principal Secretary, State Tax, Bihar, Patna having its office at Kar Bhawan, Patna.
2. The Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
3. Joint Commissioner of State Tax, Gandhi Maidan Circle, Patna.
4. Deputy Commissioner of State Tax, Gandhi Maidan Circle, Patna
5. Assistant Commissioner of State Tax, Gandhi Maidan Circle, Patna.
6. Additional Commissioner of State Tax (Appeals), Patna West Division, Patna.
7. The Union of India, through the Under Secretary, Department of Revenue, Govt. of India, New Delhi.
8. The Government of India, Ministry of Finance (Department of Revenue), through the Principal Commissioner, CBIC, New Delhi.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Bijay Kumar Gupta, Advocate
For the State	:	Mr. Vivek Prasad, Government Pleader 07
For the UoI	:	Mr. Anshuman Singh, Senior SC
		Mr. Shivaditya Dhari Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and

HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 06-05-2025

Heard Mr. Bijay Kumar Gupta, learned counsel for the
petitioner and Mr. Vivek Prasad, learned Government Pleader No.-



7 for the State. Mr. Anshuman Singh, learned Senior Standing Counsel representing the Respondent Nos. 7 and 8 is also present.

2. This writ application has been filed for the following reliefs:-

“i) For issuing of a writ of certiorari or any other appropriate writ quashing/setting aside the unlawful recovery order dated 24.08.2023 (as evident from Annexure-P-4) through which Respondent No.5 had recovered summary of demand bearing Reference No.- ZA100919006325R dated 12.09.2019 (as contained in Annexure-P-2) **which was deemed to have been withdrawn** as per the Provision of Section 62(2) BGST/CGST Act 2017 (Annexure-P3A, 3B) as the Petitioner had already filed GSTR 3B for the month July 2019 on 19.9.2019 and paid the due tax which is evident from GSTR 3B (Annex P-3)

ii) For issuing of a writ of certiorari or any other appropriate writ quashing/setting aside the unlawful recovery order dated 24.08.2023 (as evident from Annexure-P-4) through which Respondent No. 5 had recovered demand bearing Reference No.- ZA100919006325R dated 12.09.2019 (as contained in Annexure-P-2) **without application of mind as on the date of Recovery** Respondent No. 5 did not try to verify whether return GSTR 3B for the month July 2019 was filed or not which is in gross violation of provision of section 62(2) BGST/CGST Act, 2017.



iii) For a direction upon the respondents to show cause as to how and under what authority of law credit ledger and cash ledger of the Petitioner was debited by amount of Rs.1,11,87,352.00 and Rs.28,592.00 respectively on dated 24.08.2023 in gross violation of Provision of Section 62(2) BGST/CGST Act 2017 (Annex-P3A) as the Petitioner had already filed GSTR 3B for the month July 2019 on 19.9.2019 and paid the due tax which is evident from GSTR 3B (Annex-P3).

iv) For issuing of a writ of certiorari or any other appropriate writ quashing/setting aside the order of the Respondent No. 6, the Additional Commissioner of State Tax (Appeals), Patna West Division, dated 11.07.2024 (as contained in Annexure-P5A) through which the Respondent No. 06 wrongly rejected the Appeal of the Petitioner on the ground of limitation however Petitioner's appeal was filed within the time limit prescribed under Circular No 53/2023 CT Dated 02.11.2023 (Annex-P6) and thus the order is liable to be set aside.

v) For issuing of a writ of certiorari or any other appropriate writ/order commanding the Respondents to refund petitioner;s tax of Rs.1,12,15,944/- along with applicable interest which was unlawfully recovered from petitioner's company credit/cash ledger without providing any opportunity of hearing in total disregard of principles of natural justice.



vi) 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. The grievance of the petitioner in the present writ application is with respect to the orders as contained in Annexures ‘P2’, ‘P3’ and ‘P6’. It is stated that during the financial year 2019-20, the petitioner company could not file its GSTR-3B return for the month of July, 2019 up to 20.08.2019 i.e. the due date. For this reason, the Respondent No. 3 issued a notice in Form GTRR-3A under Section 46 read with Rule 68 on 21.08.2019 for failing to file monthly return and requested the petitioner to file its return within 15 days failing which it will be assessed according to Section 62 of the Bihar Goods and Services Tax/Central Goods and Services Tax Act, 2017 (hereinafter referred to as the ‘BGST/CGST Act’).

4. It is stated that on 12.09.2019, the Respondent No. 4 passed an order by which a demand order in Form- GST ASMT-13 was ordered to be issued and served upon the petitioner but no demand order in Form- GST ASMT-13 was ever issued to the petitioner.

5. It is submitted that when the petitioner specifically asserted in the writ application that no demand order in Form-



GST ASMT-13 was ever served upon the petitioner, a patently wrong and false statement came in the counter affidavit filed on behalf of the respondents. The respondents not only denied the claim of the petitioner that the demand order was never served upon him, rather emphatically asserted in the counter affidavit that the assessment order was served upon the petitioner through e-mail.

Submissions on behalf of the Petitioner

6. Learned counsel for the petitioner submits that due to non-issuance and service of the order of assessment in Form- GST ASMT-13, the whole proceeding undertaken by Respondent No. 4 would stand vitiated.

7. Attention of this Court has been drawn towards Section 62(1) read with Rule 100(1) of the BGST/CGST Act and the rules framed thereunder respectively. A copy of the summary of demand order in Form DRC-07 dated 12.09.2019 has been brought on record as Annexure 'P2'.

8. It is submitted that the Respondent No. 3 issued the summary of demand order in the Form DRC-07 demanding tax and interest of Rs.56,92,091.56/- under the BGST and Rs.56,92,091.56/- under the CGST, total amounting to Rs.1,13,84,183.12/-.



9. The petitioner asserts that the petitioner filed its GSTR 3B return on 19.09.2019 and paid due tax on it which was within one month from the date of summary of demand order dated 12.09.2019. Referring to Section 62(2) of the BGST/CGST Act, learned counsel submits that according to this provision, where the registered person furnishes a valid return within 30 days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn.

10. Learned counsel submits that despite all these developments, on 24.08.2023, the Respondent No. 5 made recovery of demand dated 12.09.2019 (Annexure 'P2') which was deemed to have been withdrawn as per sub-section (2) of Section 62 of the BGST/CGST Act. Learned counsel submits that the Respondent No. 5 while issuing order for recovery of the amount from the credit ledger and account of the petitioner, did not take trouble to verify that the petitioner had already filed the return well within the stipulated time. The submission is that the recovery is completely unlawful, it is malafide in law if not in fact and in order to justify their action, the respondents have jointly committed an act of perjury by making a false statement before this Court that the assessment order had been served upon the petitioner.



11. Learned counsel further points out that on finding no solution to the problem and as the petitioner was facing financial hardships which was adversely affecting his cash flow in business, the petitioner approached the Appellate Authority on 30.01.2024 in APL-01 along with the grounds of appeal. The submission is that the Appellate Authority rejected the appeal on the ground of limitation in complete disobedience and disregard to the judgment of this Court in the case of **SIS Cash Services Private Limited vs. Union of India** passed on 24.01.2024 in **CWJC No. 6514 of 2021** whereby and whereunder this Court has held that an appeal against an order under Section 73 or 74 has to be filed on or before 31.01.2024 and any appeal filed which is pending before the Appellate Authority could also be considered as properly filed, even if there is delay in such filing. This will also apply to an order passed under Section 62 which provision is not withstanding anything contrary in Section 73 or Section 74. Under Section 62 too, a mode of assessment is provided.

12. It is submitted that the Appellate Authority rejected the appeal and thereby the petitioner could not get redressal of its grievance. Ultimately, the petitioner had to approach this Court in its extraordinary writ jurisdiction as all the State Tax Authorities



had together indulged in acting beyond their power, *de hors* to law and thereby they caused harassment to the petitioner.

13. Learned counsel for the petitioner has relied upon a learned Single Judge decision of this Court in the case of **K. K. Pathak vs. Ravi Shankar Prasad & Ors.** reported in **2019 (1) PLJR 1051** wherein the learned Single Judge having noticed that the petitioner in the said case had suffered harassment due to misuse of executive power by an officer of the State held that for such misuse of power if the State is to be saddled with cost, such cost is required to be recovered from the said officer because of whose excessive use of power, the State is saddled with cost.

14. It is pointed out that the said judgment of the learned Single Judge was subject matter of challenge before the Hon'ble Supreme Court in **Special Leave to Appeal (Crl.) Nos.10025-10031/2018**, however, the Hon'ble Supreme Court refused to interfere with the said judgment. It is submitted that the same principle is required to be applied in this case also as the State Respondent Nos. 3, 4, 5 and 6 all seem to be liable for causing harassment to the petitioner, unlawful deprivation of his money because of misuse of power on their part.



Previous Orders of this Court and Submissions on behalf of the Respondents

15. Before we proceed to consider the submissions of Mr. Vivek Prasad, learned GP-7 for the State, it would be appropriate to reproduce the two orders passed by this Court in course of hearing of this writ application. The first order dated 29.11.2024 was passed by the learned co-ordinate Bench presided over by the then Hon'ble the Chief Justice. The order dated 29.11.2024 reads as under:-

“The contention of the petitioner is that despite the demand having been raised as per the assessment order under Section 62 of the Bihar Goods and Service Tax, Act, 2017 (hereinafter referred to as BGST, Act) on 12.09.2019, it would stand withdrawn on 19.09.2019, since the petitioner had filed Annexure-P3 returns by virtue of the provisions under sub-section 62(2) of the BGST, Act.

2. The learned Government Advocate, however, submits that the petitioner filed a delayed appeal against Annexure-P3A order which was dismissed on the ground of delay.

3. We are of the prima facie opinion that the petitioner had no reason to file an appeal, especially, if the return was filed, as submitted by the petitioner in accordance with Section 62(2) of the BGST Act. Considering the fact that the assessment



order was passed and the demand was raised under Section 62, on 12.09.2019 by virtue of the return filed under sub-section 62(2) of the BGST Act, the assessment order and the demand stands withdrawn.

4. The learned Government Advocate sought for time to find out whether the return has been filed on the date specified.

5. We direct a counter affidavit to be filed within a period of two weeks.

6. Post this matter on 09.01.2025.”

16. The second order dated 01.05.2025 is that of this Court after noticing the averments made in paragraph ‘12’ of the counter affidavit filed on behalf of Respondent No. 4. The order reads thus:-

“It is evident from the submissions made at the Bar that the statements made in paragraph ‘12’ of the counter affidavit has not been substantiated by any annexures, even though the deponent of the counter affidavit claims to have enclosed a copy of ASMT-13 served on the petitioner as Annexure-1. It transpires that paragraph ‘12’ of the counter affidavit is a result of cut, copy and paste.

2. Let the complete records be produced at the time of hearing of the application.

3. The matter is passed over.”

17. Pursuant to the order dated 01.05.2025, Mr. Vivek Prasad, learned GP-7 has produced the records. We have gone



through the same. On record, this Court finds that there are two e-mails, (i) dated August 22, 2019 sent at 03:07 PM and (ii) e-mail dated September 12, 2019 at 04:57 PM. The learned GP-7 is not sure about what was the attachment to September 12, 2019 e-mail.

18. While it is stated by learned GP-7 that this is the copy of the assessment order, learned counsel for the petitioner has contested the service of the assessment order under sub-section (1) of Section 62.

19. Be that as it may, Mr. Vivek Prasad, learned GP-7 does not contest the submission of learned counsel for the petitioner that the petitioner had already filed its return on 19.09.2019 in GSTR 3B and paid due tax on it which was within one month from the date of summary of demand order dated 12.09.2019. The submission at this stage is that the petitioner did not inform the respondent authorities that he had filed the return and paid due tax on it within the prescribed period.

20. Learned GP-7 submits that now it is evident that the petitioner had filed its return and paid the due tax on it well within a period of one month from the date of summary of the demand order, therefore, by virtue of sub-section (2) of Section 62, the assessment order under sub-section (1) of Section 62 shall be deemed to have been withdrawn. It is for this reason learned GP-7



has submitted that the impugned orders may be set aside and the matter may be remanded to the assessing authority.

21. Respondent Nos. 7 and 8 are only proforma respondents.

Consideration

22. Having heard learned counsel for the petitioner and learned GP-7 for the State as also upon perusal of the records, we find that grave injustice has been caused to the petitioner in this case by a completely unlawful recovery of demand dated 12.09.2019 (Annexure 'P2). It is an admitted position that the petitioner had already filed its return in Form GSTR 3B and paid due tax on it on 19.09.2019 which was well within the statutory period from the date of the impugned assessment order i.e. 12.09.2019. Sub-section (1) and sub-section (2) of Section 62 of the CGST/BGST Act, 2017 are as under:-

“62. Assessment of non-filers of returns.-

(1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgment taking into account all the relevant material which is available or which he has gathered



and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

(2) Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.”

23. On a bare reading of sub-section (2) of Section 62, there is no iota of doubt that the assessment order issued under sub-section (1) of Section 62 shall be taken to have been withdrawn by a legal fiction. Once, the assessment order lost its existence and efficacy in the eye of law, there was no reason for the Respondent No. 5 to go for recovery of demand dated 12.09.2019 (Annexure ‘P2’).

24. Learned counsel for the petitioner has drawn our attention towards the various orders passed by the respondent authorities from time to time. From the order dated 22.12.2020/03.03.2022, it would appear that the petitioner had submitted an application before the Assistant Commission of State Tax (in short ‘ACST’). The order is half-written and then it has



been cut down. We reproduce the order dated 22.12.2020/03/03.2022 hereunder:-

~~“दिनांक 12.09.2019 को निर्गत DRC 07 के आलोक में करदाता द्वारा इस हेतु एक आवेदन दिया गया कि उक्त DRC 07 के आलोक में करदाता द्वारा दिनांक”~~

25. There is also an initial at the top and below the cutting on the order dated 22.12.2020/03.03.2022.

26. It further appears that all of a sudden on 24.08.2023, the ACST passed the following order:-

“करदाता के GST-BO पोर्टल पर उपलब्ध DCR रिपोर्ट के अनुसार BGST/CGST Act 2017 की धारा 73 के तहत निर्गत मॉग पत्र सं0 ZA100919006325R के बकाया राशि का भुगतान आदिनांक नहीं किया गया है और न ही अपील माननीय उच्च न्यायालय में मामला प्रेषित (दायर) किया गया। अतः : राजस्व हित में बिहार वस्तु एवं सेवाकर अधिनियम, 2017 की धारा 79 के तहत विशेष रीति से वसूली की कार्यवाही प्रारंभ करते हुए आदिनांक IP1008230002429 के तहत करदाता के Cash Ledger से रु 28592/- तथा Credit Ledger से रु 11187352/- की वसूली की जाती है। अतः शेष राशि रु 167980/- की वसूली हेतु DRC-13 अलग से निर्गत किया जाएगा।”

27. It is evident from the orders available on the record that there was an application of the assessee in which he had given some information with reference to DRC 07 but then the complete order was not written and after writing few lines, the said order



was cut down/penned down. The application is not on the record. What happened to the said application is not known.

28. It is evident that the order dated 24.08.2023 was passed by ACST without recording the fact that the assessee had already filed its return and paid the due tax within time. The ACST refers to the GST-BO portal of the assessee but does not refer to the return filed by the assessee which is available on the same portal. It is stated that after filing the return, an 'ARN' is generated and the same is in the domain of the authority but by ignoring the same, the order dated 24.08.2023 has been passed and recovery has been made.

29. This Court finds much substance in the submission of the learned counsel for the petitioner. It is evident from the facts appearing on the records that the Respondent No. 5 has acted in complete violation of the established procedure of law. The said authority has misused her power and thereby passed an illegal order for recovery of the amount. The concerned authority did not think it just and proper to even issue a notice to the petitioner prior to passing an order of recovery which she was passing after about five years from the date of demand.

30. This Court is also disturbed on the manner in which the appeal preferred before the Appellate Authority has been



rejected by ignoring the judgment of this Court in the case of **SIS Cash Services** (supra). Paragraph '8' of the judgment of the Hon'ble Division Bench in case of **SIS Cash Services** (supra) is quoted hereunder for a ready reference:-

“8. Hence an appeal against an order under Section 73 or 74 has to be filed on or before 31.01.2024, and any appeal filed which is pending before the authority could also be considered as properly filed, even if there is delay in such filing. This will also apply to an order passed under Section 62 which provision is not withstanding anything contrary in Section 73 or 74. Under Section 62 too a mode of assessment is provided.”

31. It is evident that the Appellate Authority has passed the impugned order as contained in Annexure 'P5' after six months of the passing of the judgment of the High Court but he has ignored the judgment of this Court and dismissed the appeal. His act is prima-facie contemptuous.

32. Mr. Vivek Prasad, learned GP-7 has tried to impress upon this Court that the appellate order has been passed in view of another judgment of the learned co-ordinate Bench.

33. We are not satisfied with this submission at this stage.



34. Learned counsel for the petitioner has prayed for award of interest and cost.

35. While setting aside the impugned orders as contained in Annexures 'P4' and 'P5' of the writ application, the consequences shall follow. We issue notice to the Assistant Commissioner of State Tax, Gandhi Maidan Circle, Patna (Respondent No. 5) who passed the impugned order (Annexure 'P4') to show cause as to why this Court should not award interest and cost which would be recovered from her.

36. We also call upon the Appellate Authority, namely, the Additional 15-18049 Commissioner of State Tax (Appeals), Patna West Division, Patna (Respondent No. 6) to satisfy this Court as to why a proceeding for contempt be not initiated against him for acting in willful disobedience and disregard to the order of this Court passed in the case of **SIS Cash Services** (supra).

37. Let both the authorities, namely, Respondent No. 5 and Respondent No. 6 file their response within two weeks from today.

38. Mr. Vivek Prasad, learned GP-7 undertakes to inform both the authorities with regard to the order passed by this Court.



39. A copy of the order shall be communicated to the respondents immediately.

40. List this case for further order on 17th June, 2025 under the same heading maintaining its position.

41. The original records are returned to Mr. Vivek Prasad, learned GP-7.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

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CAV DATE	
Uploading Date	07.05.2025
Transmission Date	07.05.2025

