IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.928 of 2025

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Shiv Ganga Trading Co. a proprietary concern having its place of business at Tari Mohalla, Chitra Toli Road, Arrah through its proprietor namely Satyendra Agrawal male aged about 49 Years son of Late Jai Krishna Das Agrawal resident of A 2/83, Kameshwar Mahadev, Trilochan Mahadev Varanasi, Uttar Pradesh- 221001.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Assistant Commissioner of State Taxes, Shahabad Circle, Arrah.
3. The Deputy Commissioner of State Taxes, Shahabad Circle, Arrah. (2018-2019).

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate.
	:	Mr. Alok Kumar Jha, Advocate.
	:	Mr. Mukund Kumar, Advocate.
	:	Mr. Aditya Raman, Advocate.
	:	Mr. Akash Kumar, Advocate.
For the State	:	Mr. Vikash Kumar, SC-11.
	:	Mr. Akash Chaturvedi, AC to SC-11.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 21-01-2025

1. In the instant petition, petitioner has prayed for following reliefs:-

a) For issuance of a writ or order or a direction in the nature of certiorari for quashing of the order dated 27.04.2024 and the summary of order issued in form GST DRC-07 dated 28.04.2024 passed and issued by the respondent number 2 under Section 73 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the central act 2017 for short) read with Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as the Bihar Act

2017 for short);

b) For further issuance of a writ or order or a direction restraining the respondents from taking any coercive action against the petitioner in terms of section 79 of the central act 2017 and Bihar act 2017 for recovery of the amount of tax, interest and penalty determined in terms of the impugned order dated 27.04.2024 and the summary of order issued in form GST DRC – 07 dated 28.04.2024;

c) For further holding and a declaration that the item dealt by the petitioner in business being pulses and foodgrains with HSN code – 071390 is fully exempted from tax liability under the central act 2017 and Bihar act 2017 and therefore the imposition of liability of tax, interest and penalty in terms of the impugned order passed by the respondent number 2 is wholly illegal, without jurisdiction and unsustainable in the eye of law;

d) For further holding and a declaration that the petitioner being engaged in the business of trading items fully exempted under the central act 2017 and Bihar act 2017 could never be subjected to the liability of tax, interest and penalty and as such the impugned order suffers serious jurisdictional error wherein the petitioner has been saddled with such liabilities only on account of non-appearance in the proceeding;

2. Learned counsel for the petitioner submitted that sufficient material has not been apprised to the petitioner to the extent what is required to be furnished in the communications. This is evident from scrutiny under Section 61 of Bihar Goods and Services Tax Act, 2017 for the year 2018-2019 followed by notice dated 21.07.2023. The petitioner is stated to have filed return and from such return material, the concerned authority should have drawn an inference insofar as which are the items exempted/ nil rated/ 0 rated, thereafter he should have sought for proof of such of those material information. In the absence of furnishing such details in the notice dated 21.07.2023, petitioner is not in a position to file effective reply and for drawing up of further proceedings by the official respondents. It is also submitted that for the year 2017-2018 exemption has been accepted. It is also submitted that there is no change in certain goods traded by the petitioner like pulses and rice etc. during the two spells of 2017-2018 and 2018-2019. If the official respondents are distinguishing nature of trade by the petitioner from 2017-2018 and to that of 2018-2019 in that event, the concerned official respondents should have distinguished in what manner trading of goods by the petitioner are different from the respective year and it is not forthcoming.

3. *Per contra*, learned counsel for the respondents resisted the aforementioned contention of the petitioner and submitted that all necessary formalities have been followed while adhering to Section 146 and Section 169 of Central Goods and Services Tax Act, 2017. Notice was uploaded on 21.12.2023 in common portal followed by three reminders dated 09.04.2024, 18.04.2024 and 23.04.2024, therefore, there is no infirmity in the impugned order dated 27.04.2024. It is also submitted that petitioner has statutory remedy of appeal before the Appellate Authority against the impugned order dated 27.04.2024 and without exhausting such remedy, he has rushed to this Court, hence present petition is liable to be dismissed.

4. Heard the learned counsel for the respective parties. The preliminary issue raised by the respondent that the petitioner is required to exhaust statutory remedy of appeal under Section 107 of Central Goods and Services Tax Act, 2017, may not be resorted to by the petitioner for the reasons that sufficient material has not been indicated or revealed in the notice dated 21.07.2023, resultantly the petitioner is unable to file his effective reply. Further for the year 2017-2018 petitioner’s grievance has been redressed with reference to granting exemption, the same should have been accepted for the year 2018-2019. Assuming that the petitioner has transacted business other than what are the items for the year 2017-2018 in the year 2018-2019 so as to distinguish the decision for the year 2017-2018 to that of 2018-2019. In this regard also no material has been placed in the notice after scrutiny of return, therefore, the petitioner is not in a position to submit effective appeal before the Appellate Authority under Section 107 of Central

Goods and Services Tax Act, 2017. Resultantly, preliminary objection on behalf of respondent to the extent that petitioner has not availed the remedy of appeal before the concerned authority under Section 107 of Central Goods and Services Tax Act, 2017 stands overruled.

5. Perusal of records, it is evident that notice dated 21.07.2023 is not a detailed notice which are the documents to be furnished by the petitioner or to furnish his explanation. In the absence of such material information, the petitioner is not in a position to submit effective reply to the notice dated 21.07.2023. No doubt there is lapses on the petitioner in not noticing the common portal and certain documents which are uploaded namely notice dated 21.12.2023 followed by reminders on 09.04.2024, 18.04.2024 and 23.04.2024. Be that as it may, initial notice dated 21.07.2023 lacks material information so as to furnish effective reply. On this count, the petitioner has made out a case, accordingly, the impugned order dated 27.04.2024 passed by respondent no.2 stands set-aside.

6. The concerned authority is hereby directed to proceed afresh and complete the same within a period of eight weeks from the date of receipt of this order. The petitioner shall cooperate with the respondents in furnishing material information whatever demanded by the official respondents. If there is no cooperation on behalf of the petitioner, in that event respondents are at liberty to pass *ex-parte* order against the petitioner.

7. Accordingly, the present writ petition stands allowed.

(P. B. Bajanthri, J)

(Sunil Dutta Mishra, J)

Harish/ritik/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.01.2025
Transmission Date	NA