IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3595 of 2025

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M/s Suraj Agency having its office at - Chaili Tar, Maharajganj, Patna-800007 through its proprietor Lal Babu Choudhary (Male), aged about 61 years, S/o Late Suraj Prasad Choudhary, Resident of - Ward No. 51, Chaudhary Tola, Pathar Ki Masjid, Main Road, Ashok Rajpath P.S.- Sultanganj, District- Patna, Bihar.

... ... Petitioner

Versus

1. The Union of India Through the Secretary Department of Revenue, Industry of Finance, North Block, New Delhi- 110001.
2. The Secretary Department of Revenue, Ministry of Finance, North Block, New Delhi- 110001.
3. The State of Bihar through the Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
4. The Commissioner Cum Secretary, Commercial Taxes Department, Govt. of Bihar, Patna.
5. The Additional Commissioner of State Taxes (Appeals), East Division, Patna.
6. The Assistant Commissioner State Taxes, Patna City West Circle, Patna Bihar.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr.Madan Kumar, Advocate
For the UOI	:	Dr. Krishna Nandan Singh, Sr. Advocate (ASGI)
		Mr. Anshuman Singh, Sr. Standing Counsel
		Mr. Shivaditya Dhari Sinha, Advocate
For the State	:	Mr. Vikash Kumar, SC-11

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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 : 25-06-2025

In this writ application, the petitioner is seeking the following reliefs:-

> "(i) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the assessment order dated 06.12.2023 (Annexure-P/1) passed by Respondent No.6 for the F.Y. 2018-19 whereby and

whereunder the ex-parte assessment order has been passed for the aforesaid period and thereby a total liability of Rs.44,42,848/- (with breakup as -(a) Tax worth Rs.22,89,337/- (b) Interest worth Rs.19,24,959/- and (c) Penalty worth Rs.2,28, 552/-), has been imposed on the petitioner;

(ii) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the *ex-parte* demand issued in form DRC-07 dated 06.12.2023 (Ref. No. ZD101223006107B) (Annexure-P/2) i.e. by Respondent No.6 for the F.Y. 2018-19 whereby and whereunder the demand order DRC 07 has been issued under Sec 73(1) of the CGST/BGST Act, 2017 for the aforesaid year. Through the said DRC-07 a demand has been raised for the aforesaid period a total liability of Rs. 44,42,848/- (with breakup as -(a) Tax worth Rs.22,89,337/- (b) Interest worth Rs.19,24,959/- and (c) Penalty worth Rs.2,28,552/-), has been imposed on the petitioner;

(iii) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the Appellate order bearing No. 571 dated 13.09.2024 (Annexure-P/3) passed in Appeal Case No. AD100324000668L by Respondent No.5 for the F.Y 2018-19 whereby and whereunder the appellate authority i.e. Respondent No.5 has rejected (affirming the original adjudication order and demand) the appeal preferred by the petitioner without considering the fact of case and material available on record;

(iv) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the APL-04 bearing No. ZD1009240101228 dated 17.09.2024 (Annexure-P/4) passed in Appeal Case No. AD100324000668L by Respondent No.5 for the F.Y-2018-19 whereby and whereunder the appellate authority i.e. Respondent No.5 has rejected (affirming the original adjudication order and demand) the appeal preferred by the petitioner without considering the fact of case and material available on record;

(v) For issuing a writ of mandamus or any other appropriate writ directing the Respondents not take any coercive action including recovery from bank account and third parties until pendency of the present writ application;

(vi) For issuing writ of mandamus and thereby directing the Respondents to refund a sum of Rs.2,28,936/-{Rs.382/-(IGST); Rs.1,14,277/-(CGST); Rs. 1,14,277/-/- (SGST)} for F.Y 2018-19, which was deposited by the petitioner as 10% (ten percent) of disputed tax amount as needed to be paid as pre-deposit (Section 107(6)(b) of Central Goods and Service Tax Act, 2017) before filing an appeal under CGST/SGST for the aforesaid period i.e. F.Y-2018-19;

(vii) For issuance of appropriate direction including the mandamus directing the respondents to pass fresh assessment order for the F.Y. 2018-19 upon considering the invoices available with the petitioner as also as on date mapping of GSTR-1, GSTR-3B and GSTR-2A, GSTR-9 to ascertain the actual tax liability, if any on the petitioner for the period 2018-19;

(viii) For holding that the impugned assessment order dated 06.12.2023 (Annexure P/1) and the appellate order dated 13.09.2024 (Annexure P/3) have been issued in most illegal manner by Respondent No.6 and 5 without examining the records and without appreciating the supporting materials submitted during the course of personal hearing; as also without delving into the merit of the case;

(ix) For passing any such other order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

Brief facts of the case

2. It is the case of the petitioner that the impugned order of assessment dated 06.12.2023 (Annexure-P/1) is an ex-parte order without considering the stand of the petitioner. The further submission is that the Assessing Officer (respondent no.6) has not taken into consideration the GSTR-9 i.e. final return submitted by the petitioner in respect to the difference in turnover which was wrongly declared in December 2018 month GST return due to clerical error/typographical mistake.

Submissions on behalf of the petitioner

3. Learned counsel for the petitioner has submitted that when the petitioner being aggrieved by the order, as contained in Annexure-P/1, preferred an appeal before the Additional Commissioner of State Taxes (Appeals)-respondent no.5, the appellate authority rejected the appeal. According to the petitioner, the appellate authority failed to appreciate that the assessment for the aforesaid period was carried out on the basis of disparity in turnover declared in GSTR-1 and GSTR-09 related to the petitioner, the turn over reconciliation with respect to the alleged suppression of turnover submitted by the petitioner was not considered by the respondent no.5 before issuing the appellate order.

Submissions on behalf of the respondents

4. Learned ASG assisted by the Sr. Standing Counsel for the CGST and CX has opposed the writ application. It is submitted that the petitioner is registered with Patna City West Circle of Commercial Taxes Department. The petitioner had filed returns for the year 2018-19 but on comparison of GSTR-3B and

GSTR-9, it was found that the petitioner has suppressed its turnover to the tune of Rs.4,34,99,979.63/- and had not paid tax thereon. It is further pointed out that the petitioner had claimed input tax credit in excess of its eligibility as per GSTR-2A and had also made delayed payment of tax. On detecting the discrepancies, the respondent assessing authority issued notice in form DRC-01 to the petitioner, asking it to show cause as to why tax, interest and penalty should not be imposed.

5. It is submitted that the petitioner did not act and/or respond to the notice. In ultimate analysis, the proceeding resulted in imposition of impugned tax, interest and penalty amounting to Rs.44,42,848/-.

6. As regards the appellate order, it is submitted that the appellate authority has considered the entire submissions advanced on behalf of the petitioner and has comprehensively dealt with the same in the appellate order. In paragraph '14' of the counter affidavit, it is stated inter-alia that the petitioner has admitted that he had claimed input tax credit in excess of what was reflected in GSTR-2A. In this view of the matter, the legal action for violation of Section 16(2) of the CGST/BGST Act is attracted. The constitutional validity of Section 16(2) has already been upheld by this Court in M/S Aastha Enterprises Vs. the

State of Bihar (CWJC No.10395 of 2023) in which this Court has held that the claim of the input tax credit raised by the petitioner in the said case would not sustain when the supplying/selling dealer had not paid up the amounts to the Government; despite collection of tax from the purchasing dealer. It is further submitted that the petitioner has been given appropriate opportunity of hearing by the appellate authority. It is pointed out that at the stage of assessment admittedly the petitioner was served with a show cause dated 21.09.2023 but he did not respond to the said notice, therefore, the assessment order which has already been upheld by the appellate authority cannot be said to be in violation of principles of natural justice. The petitioner had never requested for personal hearing before the respondent assessing authority.

7. From the records, it appears that the copy of the counter affidavit of respondent nos.5 and 6 was served upon the office of the learned counsel for the petitioner as back as on 21.4.2025 but no rejoinder to the same has been filed by the petitioner.

<u>Consideration</u>

8. Having heard learned counsel for the petitioner and learned ASG for the respondent nos.5 and 6 as also on perusal of the impugned orders as contained in Annexure-P/1 and P/3 respectively, we find that the order under Section 73(9) read with Rule 142(5) of the Central/Bihar Goods and Service Tax Act and Rule, 2017 has been passed after the annual return furnished by the petitioner for the financial year 2018-19 was selected for scrutiny. The assessing authority noticed the suppression of turnover, availment and utilization of input tax credit wrongly and delayed payment of tax. The liability on these accounts were quantified under the provisions of Section 73(1) of CGST/BGST Act.

9. This Court further finds that the show cause notice was issued to the petitioner calling upon him to show cause as to why the total tax amount of Rs.22,89,337/- which includes IGST, CGST and SGST amount of Rs.3813/- and Rs.11,42,762/- and Rs.11,42,762/- respectively, short paid and wrongly availed/utilized should not be recovered with applicable interest under Section 50 of the CGST/BGST Act.

10. The specific statement made by the answering respondents in paragraph '10' of the counter affidavit asserting service of show cause notice upon the petitioner has not been controverted by and on behalf of the petitioner. The assessing authority proceeded to pass the impugned order as contained in

Annexure-P/1 and upon determination of tax the petitioner has been directed to pay the tax amount as mentioned hereinabove.

11. We have gone through the appellate order (Annexure-P/3). It is found that the appellate authority has considered the grounds of appeal. In respect of suppression of turnover, the petitioner submitted that the mismatch in December 2018 return showing sales as per GSTR-3B at Rs.4,83,03,934.70/- was due to a clerical mistake. The actual sale for the period as per GSTR 1 in B2C was Rs.48,03,934.00/-. Thus, there was a difference of Rs.4,35,00,000.00/- in the sales figure. Similarly, there was a mismatch in January 2019 returns the sales as per GSTR 3B was Rs. 29,00,239.28/-, exempted sales was at Rs.1,68,750.00/- and the total sales for the period was Rs.30,68,989.28/- but as per GSTR 1, in B2B it was Rs.4,35,626.48/- and as per B2C it was Rs.20,05,429.00/-, the exempted sales was Rs. NIL which was said to be by way of mistake of accountant. Total sales for the period was Rs.24,41,055.48/-. Thus, the difference amount in sale was Rs.6,27,933.80/- and the net differences was Rs.4,41,27,934.50/-.

12. As regards the liability on account of excess ITC claimed/utilized, the petitioner submitted that he is in possession of a tax invoice or debit note issued by a supplier registered under the Act, against the goods or service received and paid the amount during 180 days from the date of invoice. The submission before the appellate authority was that in case of Bharat Aluminium Company Vs. Union of India and others, Chhattisgarh High Court relying on the proposition laid down by Madras High Court in case of D.Y. Beathel Enterprises Vs. State Tax Office (W.P. (MD) No.2147 of 2021, observed that if the default is made by non-payment of tax by the seller, recovery shall be made from the seller and only in exceptional circumstances, it can be from the recipient, therefore the input tax credit which was claimed by the petitioner cannot be denied for the reason that the seller has not uploaded their invoice in time. It is his submission that the provision allowing of input tax credit on the basis of reflection in GSTR-2A was first introduced vide notification No.49-Central Tax dated 09.10.2019 by inserting clause 4 in rule 36 of CGST Rule 36(4). It was submitted that the Rule is applicable from 09.10.2019 with allowing the gap of 20% and the same is not applicable for the financial year 2018-19.

13. The above-mentioned ground raised by the petitioner before the appellate authority has been discussed in detail in the impugned appellate order. The appellate authority has recorded that on behalf of the appellant it was informed that the mistake in the return of month of December, 2019 has been corrected in GSTR-9 but the appellant did not produce any concrete evidence/document such as sale register and the audit report.

14. The appellate authority has further found that the appellant has availed the benefit of input tax credit in excess of the amount shown in the GSTR-2A. In course of hearing the appellant did not produce any evidence/document with respect to the difference of amount found in the ITC availed by the petitioner and the actual amount showing in GSTR-2. In this connection, the appellate authority has reproduced the relevant provision Section 16(2) of the CGST/BGST Act which lays down the eligibility conditions for availing the input tax credit. The appellate authority has quoted paragraph 4.1.2 of the Circular No.183 dated 27.02.2022 issued by the government of India, Department of Revenue (GST Policy Wing) in which the clarifications have been given with regard to the differences up to Rs. 5 lacs in respect of the ITC found in GSTR-2A and GSTR-3B. The clarification as contained in paragraph 4.1.2 reads as under:-

> "**4.1.2** In cases, where difference between the ITC claimed in Form GSTR-3B and that available in Form GSTR-2A of the registered person in respect of

> a supplier for the said financial year is upto 5 lakh, the proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been paid by the said supplier in his return in Form GSTR-3B.”

15. The appellate authority has found that the appellant could not produce any evidence in terms of the clarifactory circular dated 27.02.2022 read with Section 16(2) (a) (b) (c) and (d).

16. In course of hearing, learned counsel for the petitioner does not dispute that the statements made in paragraph ‘14’ of the counter affidavit which mentions admission of the petitioner as regards his claim input tax credit in excess of what was reflected in GSTR-2A, has not been denied.

17. The petitioner has statutory remedy of appeal before the Tribunal, still the petitioner has chosen to move this Court in its extraordinary writ jurisdiction. This Court is of the considered opinion that the impugned orders are neither suffering from violation of principles of natural justice nor this Court finds any jurisdictional error committed by the respondent authorities. The scope of interference with the impugned orders in the extraordinary writ jurisdiction of this Court cannot be extended so as to entertain the present writ application.

18. This writ application is dismissed. However, the petitioner will be at liberty to avail the alternative statutory remedy which may be available to the petitioner in accordance with law.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

arvind/-

AFR/NAFR	
CAV DATE	
Uploading Date	01.07.2025
Transmission Date	