IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3766 of 2025

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1. Mahto Enterprises a proprietary concern having its place of business at J.K. College, P.S. Biraul, Parhat, Distt. - Darbhanga, Bihar-847203 through its proprietor namely Baidyanath Kumar Mahto male aged about 39 years son of Seth Mahto, resident of Ramnagar, Supaul Bazar, P.S. Biraul,Distt. Darbhanga, Bihar-847203.
2. Md. Akram, Son of Riyajul Hasan, resident of Bainjni, P.S. - Tanda, Distt-Rampur, Uttar Pradesh-244927.

... ... Petitioners

Versus

1. The State of Bihar through Commissioner, Department of State Taxes, Government of Bihar, Patna.
2. The Joint Commissioner of State Taxes, Gopalganj Circle, Gopalganj.
3. The Deputy Commissioner of State Taxes, Darbhanga-1, Darbhanga.
4. The Assistant Commissioner of State Taxes, Gopalganj Circle, Gopalganj.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kejriwal, Advocate
	:	Mr. Alok Kumar Jha, Advocate
	:	Mr. Mukund Kumar, Advocate
	:	Mr. Akash Kumar, Advocate
	:	Mr. Aditya Raman, Advocate
For the State	:	Mr. Vivek Prasad, Advocate (G.P.-7)
	:	Ms. Supragya, Advocate (A.C. to G.P.-7)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR SINHA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

2 24-03-2025 In the instant writ petition, petitioners have prayed for the following relief(s):-

a) For issuance of a writ in the nature of certiorari for quashing of the order dated 16.01.2025 and the summary of order issued in form GST DRC-07 dated 16.01.2025 issued by the respondent nos. 2 and 4 respectively *whereby a penalty equal to 200% of the assumed value of the goods transported by the concerned vehicle has been imposed in exercise of powers under section 129 (1) (b) of the Central Goods And Services Tax Act 2017 (hereinafter referred to as the act 2017 for short) in most illegal, arbitrary and unreasonable manner;*

b) For further restraining the respondents from taking any coercive action against the petitioner for recovery of the penalty in terms of the impugned order during the pendency of the present writ application;

c) For further issuance of a writ or order or a direction upon the respondents to release the aforesaid truck along with goods loaded therein in favour of the petitioners on payment of penalty as prescribed under section 129 (1) (a) applicable for owner of the goods as the petitioner had already forwarded the invoice of the goods lying loaded in the truck in question and had requested for release of the same on email vide a letter dated 07.01.2025;

d) For further holding and a declaration that the respondent number 2 had no jurisdiction in terms of section 129 of the central act 2017 to determine the market value of the goods transported by the vehicle in question in absence of any such powers vested in law and therefore the impugned order imposing penalty equal to 200% of the assumed value of goods in the truck is wholly without jurisdiction;

> *e) For further holding a declaration that the market value of the stock of scrap assessed by the respondent number 2 being 45 per KG is unreasonably on the higher side and is more than double the rate of Rs.20 per KG at which the petitioner number 1 had raised the invoice in favour of the consignee for the same very stock of scrap which is not only without jurisdiction in terms of section 129 of the central act 2017 but is also unreasonable and without any legal and valid basis;*
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> *f) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case.*

2. The petitioners have statutory remedy of appeal before the appellate authority and without exhausting such remedy, petitioners have rushed to this Court. The Hon'ble Supreme Court in the case of **State of Jammu and Kashmir Vs. R.K. Zalpuri** and others reported in **AIR 2016 Supreme Court 3006**. In para 20, it is held as under:-

> ***"20.** Having stated thus, it is useful to refer to a passage from City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwala [City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwala, (2009) 1 SCC 168] , wherein this Court while dwelling upon jurisdiction under Article 226 of the*

Constitution, has expressed thus: (SCC p. 175, para 30)

"30. The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other factors."

Underline Supplied

One of the principles laid down in the aforementioned decision is before invoking Article 226 of the Constitution, if he/she has a statutory remedy of appeal, the same is required to be exhausted. In the present case, we could have invoked extraordinary jurisdiction under Article 226 of the Constitution and the same is not permissible for the reasons that certain disputed facts are involved in the matter to the extent of ownership of the seized scrap.

Therefore, the petitioners are relegated to the appellate authority. If such memorandum of appeal is filed by the petitioners, the concerned appellate authority is hereby directed to adjudicate the memorandum of appeal at the earliest.

3. The writ petition stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Sinha, J)

GK Sinha/-

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