

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5291 of 2024

M/s Lord Vishnu Construction Pvt. Ltd., a Private Limited Company incorporated under the provisions of Companies Act, 1956, having its registered office at 101, Lotus Apartment, New Patliputra Colony, P.S. Patliputra, Town and District Patna through one of its Directors, namely, Ramakant Singh, Male, Aged About 69 years, Son of Ram Khelawan Singh, Resident of new Godown, Maharani Road, P.S. Gaya, District- Gaya.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. The State of Bihar through the Commissioner cum Secretary, Department of State Tax, Government of Bihar, Main Secretariat, Patna.
3. The Commissioner cum Secretary, Department of State Tax, Government of Bihar, Main Secretariat, Patna.
4. The Deputy Commissioner of State Tax, Patna Central Circle 2, Patna.
5. The Joint Commissioner of State Tax, Patna Central Circle 2, Patna.
6. The Assistant Commissioner, State Tax, Patna Circle, Circle 2, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Archana Shahi, Sr. Adv Mr. Mohit Agarwal, Adv Mr. Vishal Kumar
For the UOI	:	Mr. Anshuman Singh, Sr. SC CGST & CX Mr. Shivaditya Dhari Sinha, Ac To ASG,
For the State	:	Mr. Vikas Kumar, SC-11

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 03-03-2025

Mrs. Archana learned Senior counsel for the petitioner and Mr. Anshuman Singh, learned Senior standing counsel for the CGST and CX and Mr. Vikash Kumar, Standing counsel for the State.



2. This writ petition has been preferred seeking the following reliefs :

That the Present Writ Petition is being filed for the following reliefs:

- i) For direction upon the Respondent Commissioner of State Tax, Department of State Tax, Government of Bihar, Patna to register, hear and dispose of the Revision Application filed under section 108 of the GST Act, 2017 by the Petitioner against the order dated 31.10.2023 passed under section 73(9) of the GST Act, 2017 by the Respondent Deputy Commissioner of State Tax, Patna Central Circle-2, Patna with respect to Financial Year July, 2017 to March, 2018 as the same has been filed through e-mail dated 06.03.2024 due to non-uploading of Revision Application on the GST Portal of the Respondent Department;
- ii) For direction upon the Respondent Deputy Commissioner of State Tax, Patna Circle-2, Patna to not take any coercive action or recovery measures for recovery of the impugned order dated 31.10.2023 passed under section 73(9) of the GST Act, 2017 during the pendency of the Revision Application filed vide e-mail dated 06.03.2024 by the Petitioner against the impugned order,
- iii) For quashing of the order dated 31.10.2023 and the subsequent demand raised in Form DRC-07 dated 31.10.2023 under section 73 (9) of the GST Act, 2017 whereby a demand to the tune of Rs. 1,57,06,316/- (Tax), Rs. 1,53,13,687/-(Interest) and Rs. 15,78,940/- (Penalty) has been imposed against the Petitioner as the same has been passed in violation of the principle of natural justice and also error apparent from record; and/or for any other relief[s] for which the Petitioner may be



found entitled to in the facts & circumstances of the present case.

3. During the pendency of the writ application, the petitioner has amended the writ petition. In paragraph '10' of the interlocutory application seeking amendment of the writ, the following statements have been made :

“7. That it is further humbly stated that in the present case from the perusal of the GST Portal of the Petitioner company it would transpire that no notices of any nature was ever communicated to the Petitioner under the head of 'notices and orders' whereas the same were uploaded under the head 'additional notices and orders' and, therefore, as rightly pleaded in Para 12 of the writ application, as no notices were uploaded under the heading of 'notices and orders', the Petitioner could not learn about issuance of such notices and, therefore, was restrained from making any reply to the same by the act of the Respondents. The Petitioner seeks leave of this Hon'ble Court to bring on record the Screenshot of the GST Portal of the Petitioner Company to substantiate its case that all the notices were issued under the heading 'additional notices and orders' for kind consideration of this Hon'ble Court.”

Case of the petitioner

4. It is the case of the petitioner that the petitioner company filed its annual return in Form GST-IX on 07.02.2020 wherein the petitioner provided the details of its turnover and computed the tax and paid the tax to the respondent department. The petitioner claims to have filed Reconciliation Statement Form GSTR-9C with respect to the Financial year 2017-18 and also declared under Part II (5),



Serial No. A, turnover from April, 2017 to June, 2017 showing an amount of Rs. 7,13,19,888/- as the turnover for the period April, 2017 to June, 2017 was before the period of enforcement of Goods & Service Tax Act, 2017 and thus were subjected to Act under the Bihar VAT Act, 2005.

5. The petitioner claims that the company had not concealed any quantum of turnover with a view not to pay the tax on the same. It is the submission of the learned Senior counsel for the petitioner that in the first week of March, 2024 the petitioner learnt that an order under Section 73(9) of the GST Act, 2017 dated 31.10.2023 has been passed by the Deputy Commissioner of State Tax, Patna Central Circle 2, Patna (Respondent No. 4) whereby after recording certain discrepancies and allegations of wrong computation of tax with respect to Financial year 2017-18, a total demand to the tune of Rs. 3,25,98,914/- including the component of tax, interest and penalty has been imposed against the petitioner company. The copy of the impugned order and demand raised by the Respondent No. 4 have been brought on record as Annexure P/4 and P/4-A respectively. These are under challenged in the writ application.

6. The learned Senior counsel for the petitioner



submits that the Respondent Joint Commissioner of State Tax, Patna Central Circle-2, Patna had issued show cause notice dated 27.09.2023 but the petitioner could not know about the same and as a result thereof no reply could be filed on behalf of the petitioner.

7. By filing the amendment petition, the petitioner has brought to the notice of this Court that in the present case on perusal of GST portal of the department, it would transpire that no notice of any nature was ever communicated to the petitioner under the head of 'notices and orders' as the same was uploaded under the heading 'additional notice and order'.

8. It is the submission that since no notice was uploaded under the heading of 'notices and orders' the petitioner could not learn about the issuance of such notice, and therefore, could not submit its response to the respondents. To substantiate the pleadings in this regard made in Paragraph No. '7' of the amendment application, the petitioner has brought on record the Xerox copy of the screenshot of GST portal which has been annexed as Annexure P/8.

9. Referring to Section 169 (1) of the BGST Act, 2017 and the impugned order dated 31.10.2023 passed under



Section 73(9) of the BGST Act, 2017, it is submitted that the impugned order and demand notice has been issued in utter violation of principle of nature justice. Hence, these are liable to be quashed.

10. The petitioner has further placed before this court, the Circular No. 128/47/2019-GST dated 23.12.2019 issued by the GST Investigation Wing, Central Board of Indirect Taxation and Customs, Department of Revenue, Ministry of Finance, Government of India by which it has been communicated to the tax payers and other concerned persons that any document/notice must bear Document Identification Number (DIN). Although a pleading to this effect has been made in the amendment petition but learned Senior counsel for the petitioner has, at this stage submitted that since the circular has been issued by the Central Board of Indirect Taxes & Customs (CBIC) and the same has not been adopted by the State Government as claimed by the State Government in its affidavit, she would not be pressing this issue at this stage.

11. Learned Senior counsel has relied upon the judgment of the Hon,ble Delhi High Court in case of **Anhad Impex Through its Partner & Anr. Vs Assistant Commissioner Ward 16** rendered on 16 February, 2024



wherein the Hon'ble Delhi High Court has, after finding that the notice issued to the petitioner in the said case were placed under the heading 'additional notices and orders' took a view that the ex-parte impugned order of the Assessing Officer was required to be interfered with and one opportunity be given to the petitioner to respond to the show-cause notice and thereafter show-cause notice be re-adjudicated.

12. Learned Senior counsel has further relied upon a Division bench Judgment of Hon'ble Allahabad High Court wherein the Hon'ble Court referred the earlier judgment in case of Ola Fleet Technologies Pvt. Ltd Vs State of U.P. & 2 others, Writ Tax No. 855 of 2024 decided on 22.07.2024 and found that the notices having not been uploaded on the heading 'due notices and orders' the petitioner was entitled to the benefit of doubt, and consequently, the matter had been remanded to the authority.

Submissions of the State

13. Mr. Vikas Kumar, learned Standing Counsel No. 11 for the State has led the argument.

14. Learned counsel has taken this Court through the statements made in the counter affidavit and supplementary counter affidavits. However, learned Standing Counsel No. 11



agrees that in the counter affidavit/supplementary counter affidavit, the respondents have not come out with clean and positive statement that the notice/showcause notice issued to the petitioner were put on the portal of the department under the heading 'notices and orders'.

15. Learned counsel has however, submitted that Section 169 of the BGST/CGST Act, 2017 mandates that any notice should be made available under notices and order section and provides that the notice and order may be served by making it available on the common portal, it is his submission that the mandate of Section 169 has been followed in this case and the petitioner cannot get benefit of the fact that notices were not placed under the heading 'notice and orders' and those were placed under the heading 'additional notices and orders'. In this regard, he has contested the submissions of learned senior counsel for the petitioner.

16. It is his submission that notices were served on the petitioner by placing the same on the common Portal and Annexure R-2/1 which is annexed by the petitioner only corroborate the fact that show-cause notice and remainders were uploaded by the assessing authority under the main notices section of the portal.



17. Mr. Anshuman Singh, learned Senior Senior Standing counsel for the department has endorsed the submissions of learned Mr. Vikash Kumar, SC-11.

Consideration

18. We have heard learned counsel for the parties. The solitary issue which we have been considering for the present in the writ application is, as to whether, the impugned order and demand notice as contained in Annexure '4' and '4/1' respectively are liable to be quashed on the ground that the petitioner was not duly served with the notices/show-cause notice and remainders.

19. Section 169 of the CGST Act, 2017 reads as under:

“(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:-

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorized representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or (b) by registered post or speed post or courier with acknowledgment due, to the person for whom it is intended or his authorized representative, if any, at his last



known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.”

20. An identical issue, as to whether, the notice put under the heading ‘additional notices and orders’ on the common portal may be taken to have been duly served upon the Assessee or not arose for consideration before the Hon’ble



Division Bench of the Delhi High Court in the case of **Anhad Impex (Supra)**. It was found that the show-cause notice was uploaded on the portal in the category of 'additional notices and orders' which were not easily accessible hence, skipped the attention of the petitioner. The Hon'ble Court having noticed that the petitioner had made out a case that he had missed out the receipt of the notice, therefore, could not respond to the show-cause notice, quashed the impugned order dated 29.11.2023 and directed the respondent to enable the petitioner to file a response to the show-cause notice within a period of 30 days and the respondent was directed to adjudicate the show-cause notice.

21. The Hon'ble Allahabad High Court has taken a similar view in the case of Ola Fleet Technology Pvt. Ltd (Supra), the same has been followed in the case of ***Ms. Sudarshan Beopar Company Limited Vs. Union of India and 3 others reported in 2025 AHC 3854-BD.***

22. We have found from the screenshot of the portal which has been brought on record that there are some instruction on the portal for the Assessee which read as under :

“Following Notices/Orders Issued by tax authorities are available under "Notices and Orders":

- Notice/Orders/Intimations pertaining to registration including new registration,



amendment, cancellation, revocation and other communications.

- Notices issued by System to return defaulters in Form GSTR-3A.
- Notices pertaining to Return module comprising GST DRC-01B and GST DRC-01C.
- Summary of assessment orders issued in Form GST DRC-07 where notices and other proceedings were held offline.

2. Following Notices/Orders issued by tax authorities are available under "Additional Notices and Orders":

- Notices/Orders pertaining to nodules- Advance Ruling, Appeal, Assessment/Adjudication, Audit, Enforcement, Prosecution and Compounding, Recovery, LUT etc.

3. Notices/ Orders pertaining to Refund module will be shown under case details page of respective ARN of refund. Please navigate to 'Services>User Services> My application' and select ARN under Application Type as 'REFUNDS' ”

23. In this case, we have also noticed that Section 169 lays down the methods for service of notice/summons/order/any other communication. Clause(e) provided one of the modes of service by making it available on the common portal. We find from reading of Sub-Section(2) and Sub-Section (3) that the legislators have provided for deemed service of notice in those cases where the notice, summons, order or decision have been served by tendering or publishing a copy thereof and affixed in the manner provided in Sub-Section(1).



24. The notice or summons or any communication sent by registered post or speed post shall be deemed to have been received by addressee on the expiry of the period normally taken by such post in transit unless the contrary is proved. In course of argument, a question arose, as to whether Assessee is required to go on and examine the common portal everyday to find out whether there is any notice, summon or communication relevant to him or in his respect, why while putting the notice on the common portal, in order to facilitate the Assessee to know about the placement of the notice on the common portal an E-mail be not sent simultaneously on the registered E-mail address of the Assessee. While learned Senior Counsel for the petitioner submitted the no doubt Clause (e) under Sub-Section 1 of Section 169 provides the modes of service of notice/communication by putting it on the common portal but to make it meaningful and to ensure proper service of notice on the Assessee, the department should send the copy of notice simultaneously on the registered E-mail address of the Assessee, learned Standing Counsel for the State has taken a plea that if the statute recognizes service of notice by making it available on the common portal, the department may not be obliged to adopt one more mode of communication as envisaged



under Sub-Section-1 of Section 169.

25. In the opinion of this Court, the purpose behind service of notice is to make an Assessee aware of the notice/summons/orders/decisions or any communication issued by the Department. Thus, this aspect of the matter is required to be looked into by the Department in order to ensure itself that the notices are duly served. For the present, this Court is not going into this issue and keeping it open to be considered in an appropriate matter. In the meantime, the Department may take a view on it, if so advised.

26. Since we have found that in the present case there is an assertion that the notice/show-cause/reminders all were placed under the heading 'additional notices and orders' and the screenshot placed on record has not been denied by the respondents and there is no specific averments in the counter affidavit/supplementary counter affidavit that notices/show-cause/communication were put under the heading 'notice and order' on the common portal, we are of the view that petitioner has made out a case for interference. The ends of justice requires that the impugned order as contained in Annexure-4 and 4/1 be set aside and we accordingly do so.

27. The petitioner shall appear before the



Respondent No. 4 within four weeks from today and submit it's response to the show-cause notice with all such materials which the petitioner may be advised to place on record before the Respondent No. 4. Thereafter, the Respondent No. 4 shall fix a date of hearing and after hearing the petitioner/authorized representative of the petitioner, the Respondent No. 4 shall pass a fresh order of assessment within a period of two months from the date of hearing of the matter. Accordingly, this writ application is allowed to the extent as indicated herein above.

28. We make it clear that that we have not entered into merits of the contentions and have not taken into consideration any other issues for the present.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

Sunnykr/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	06.03.2025
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