

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6990 of 2025

M/S Shivam Enterprise a Proprietorship Firm having GSTIN-10AIRPV4637R1ZD and office at Plot No. 117, Khata No. 192, Baeily Road, Konthwa, RPS More, Patna, Bihar, 801503 through its Proprietor VAGHANI JAYESH GOVINDBHAI, Gender- Male, aged about 34 Years, Son of Govindbhai Narshibhai Vaughani, Resident of Shivam Ceramic, Khagaul Road, Lekha Nagar, Danapur, Post - Danapur Cant, Police Station- Danapur, Dist. - Patna, Bihar - 801503.

... .. Petitioner

Versus

1. The State of Bihar through The Principal Secretary, State Tax, (Department of State Tax) Bihar, Patna having its office at Kar Bhawan, Patna - 800001.
2. The Principal Secretary Cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
3. Joint Commissioner of State Tax, (Department of State Taxes) Danapur Circle, Patna West Division, Patna, Bihar.
4. Assistant Commissioner of State Tax, (Department of State Taxes) Danapur Circle, Patna West Division, Patna, Bihar.
5. The Union of India through the Finance Secretary, Department of Revenue, Govt. of India, New Delhi.
6. The Government of India, Ministry of Finance (Department of Revenue), through the Director, CBIC, New Delhi.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Bijay Kumar Gupta, Advocate
For the CGST & CX	:	Mr. Anshuman Singh, Senior SC
For the State	:	Mr. Vikash Kumar, SC-11

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE AJIT KUMAR
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

2 12-08-2025 Heard learned counsel for the petitioner and learned Standing Counsel-11 for the State respondents as also learned Senior Standing Counsel for the Department of CGST and CX.

2. The petitioner in the present case has prayed for the following reliefs:-



“i) For the demand order issued vides Process no. NIL dated NIL and by unreasoned order in violation of Section 73(9) of BGST/CGST Act, 2017 (as contained in Annexure-P-2) and Summary of demand order issued vide Reference No-ZA100819000886H, dated 19.08.2019 without digitally signed in violation of Rule 26(3) and Rule 142(1) of BGST/CGST Act and Rule, 2017 (as contained in Annexure-P-2A) in the form of DRC-07 passed by the Respondent No-4 demanding tax, interest and penalty total amounting to Rs.4,53,833 under the BGST Act for the period July 2017 to March-2018 in Form GST DRC-07 be quashed as the Demand Order has been passed without grant of Proper "PERSONAL HEARING NOTICE" as mandated by S 75(4) BGST/CGST Act,2017 and in violation of principles of natural justice as no notice in the Form GST ASMT-10 was issued prior to Show Cause notice in violation of Section -61 read with Rule 99 of BGST/CGST Act, 2017.

ii) For that the Show cause Notice issued vide process no NIL dated NIL and unsigned in violation of Section 73(1) and other provisions of BGST/CGST Act, 2017 (as contained



in Annexure -P-1) and summary of the Show Cause Notice issued vide Reference No-ZA1007190000174 dated 03.07.2019 (aa contained in Annexure-P-1A) **without digitally signed** in violation of **Rule 26(3) and Rule 142(1) of BGST/CGST Act and Rule, 2017** and issued in violation of **S 73(8) and S 75(4)** of BGST/CGST Act, 2017 and so violative of principles of natural justice and thus be quashed.

iii) For the Show Cause Notice issued vide process no. NIL dated NIL and **not signed by the issuing authority (Annexure P-1)** and summary of Show Cause Notice issued vide reference no. ZA1007190000174 dated 03.07.2019 though uploaded on the GST portal, was **without digital signature in violation** of Instruction No-04/2023 dated GST dated 23.11.2023 and **Rule 26(3) and Rule 142(1) of BGST/CGST Act and Rule, 2017** without issuance of **GST ASMT-10 in violation of Section 61 read with Rule 99 of BGST/CGST Act, 2017** violates the principles of natural justice.

iv) For granting any other relief (s) to which the petitioner is otherwise found entitled to in accordance with law.”

3. Learned counsel for the petitioner has assailed the



impugned orders on various grounds. It is submitted that the summary of show cause notice which was issued on 03.07.2019 and uploaded on the GST portal in the 'Additional Notices Column' in form of GST-DRC-01 sought the petitioner to file his submission against the ascertainment to be furnished up to 08.07.2019. At this stage, the date of personal hearing was fixed on the same date i.e. 08.07.2019 which was the date for filing of reply. This, according to learned counsel, is not in consonance with the provision of Section 75(4) of the Bihar Goods and Services Tax/Central Goods and Services Tax Act, 2017 (in short 'BGST/CGST Act, 2017'). In addition, it is submitted that the summary of the show cause notice was also not digitally signed.

4. Learned counsel for the petitioner submits that later on, a reminder notice was also uploaded on the portal in the 'Additional Notices Column' on 03.08.2019 and in that reminder notice also, the date of personal hearing was fixed on 16.08.2019 which was the date fixed for submission of the reply. This notice was also not digitally signed which is in violation of Rule 26(3) of the BGST/CGST Rule, 2017.

5. Learned counsel submits that without providing proper opportunity of personal hearing as required under



Section 75(4) of the BGST/CGST Act, 2017, demand order has been issued. Learned counsel has assailed the impugned order as contained in Annexure 'P2' on the ground that it is not a reasoned order. He has also assailed Annexure 'P2A' in form of DRC-07 passed by Respondent No. 3 demanding tax, interest and penalty total amounting to Rs.4,53,833/- under the BGST Act, 2017 for the period July 2017 to March 2018.

6. In response to the writ application, a counter affidavit has been filed on behalf of the contesting Respondent Nos. 3 and 4.

7. Mr. Vikash Kumar, learned SC-11 submits that the present writ application has been filed on frivolous ground by mentioning erroneous facts which are misleading. In this case, a demand notice has been issued only after acceptance of the petitioner by way of online submission that he had wrongly availed transitional credit under SGST head amounting to Rs.3,45,120/- which can be disallowed.

8. It is submitted that since the petitioner has accepted wrong availment of transitional credit for the period 2017-18 by way of a written submission, the grievance of the petitioner that the notices were uploaded under the heading 'Additional Notices' is of no significance. The fact remains that the



petitioner has submitted a response to the show cause notice which has been taken into consideration by the respondent authorities. It is further pointed out that online order under Section 73(9) of the GST Act, 2017 was passed by the Assessing Officer through common portal of GST system on 19.08.2019 and after affixing the digital signature, summary of demand in Form DRC-07 as prescribed in Rule 142(5) was issued electronically which is a system generated demand in the prescribed form.

9. Attention of this Court has also been drawn towards the statements made in paragraph '13' of the counter affidavit in which while answering paragraph '5' of the writ application, the State respondents have submitted that there is no dispute as to service of notice in this case and the order has been passed on the acceptance made by the petitioner, therefore, it cannot be said to have been passed in violation of the principles of natural justice. It is submitted that the Proper Officer has only imposed interest of Rs.1,08,713/- for wrong availment of the input tax credit and this imposition of interest is in consonance with the provisions of the Act as contained in Section 50(3) of the GST Act, 2017. The petitioner has wrongly and incorrectly mentioned that penalty has been imposed in the instant case.



10. Having understood the stand taken by the Respondent Nos. 3 and 4, learned counsel for the petitioner has then taken a stand that in the response submitted before the Proper Officer, the representative of the petitioner had committed a mistake. It is pointed out by taking this Court through paragraph '3' of the rejoinder wherein in response to paragraph '5' of the counter affidavit of Respondent Nos. 3 and 4, it has been submitted that while filing reply, there was an inadvertent error in drafting and petitioner's representative instead of countering show cause notice submitted incorrectly because he was not well versed in drafting and he was not sure with the facts as well.

11. Having heard learned counsel for the petitioner and learned SC-11 for the State respondents as also learned Senior Standing Counsel for the CGST and CX, we are of the considered opinion that the order passed by the respondent authorities/Proper Officer is based on the acceptance of fact by the petitioner that they had wrongly availed and utilised the input tax credit during the year 2017-18, this Court need not go into the issue of service of notice in the present case for a simple reason that the petitioner has already submitted its reply before the Proper Officer which has been taken into consideration



while passing the impugned order. So far as the grievance of the petitioner that a mandatory personal hearing under sub-section (4) of Section 75 of the GST Act, 2017 was required to be given to the petitioner if any adverse order was contemplated against him, this Court finds that the plea of the petitioner is completely unfounded and not based on the foundations laid down in the writ application. There is no denial of the fact that pursuant to the show cause notice, the petitioner had submitted a reply through its representative wherein they had accepted availment of input tax credit wrongly. The order passed by the Proper Officer is based on the admission of the Petitioner as to wrong availment of the input tax credit. Even while filing the writ application, the petitioner did not take a plea that its representative had committed any wrong and if so, how that wrong was committed by the representative. In rejoinder to the counter affidavit, a bald plea has been taken for the first time on behalf of the petitioner that it's representative had committed a wrong, he was not aware of the facts. Again, this statement in the rejoinder has no basis to stand and the statements alone are not inspiring confidence of this Court.

12. In ultimate analysis, we find that what has been done by the Proper Officer is to raise a demand on account of



interest on the amount which was wrongly availed as input tax credit by the petitioner. This is in terms of Sub-Section (3) of Section 50 of the BGST Act, 2017 only. No penalty has been imposed.

13. Thus, we find no reason to exercise our power of judicial review in the facts of the present case.

14. This writ application has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Ajit Kumar, J)

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