IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7830 of 2024

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Tata Projects Limited a company registered under Companies Act, 1956 having its office at Ground Floor, House No. 20, State Bank of India, Kankarbagh Road, District Patna 800020, Bihar through its Authorised Signatory Shri Prem Prakash Sagar (Male, aged about 47 Years) son of Late Shri Hodil Singh Resident of 5/406, Gautam Nagar, ITI Road, Koil, Aligarh, Uttar Pradesh-202001.

... ... Petitioner/s

Versus

1. Union of India through the Secretary, Finance, North Block, New Delhi-110001.
2. Central Board of Indirect Taxes and Customs, through its Secretary having its office at 47 B, CBIC, Department of Revenue, North Block, New Delhi 110001.
3. Commissioner of CGST and Central Excise having its office at Central Revenue Building, (Annexe), Bir Chand Patel Path, Patna.
4. Joint Commissioner, Central GST and Central Excise, Patna 1 having its office at Central Revenue Building, (Annexe), Bir Chand Patel Path, Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D. V. Pathy, Sr. Advocate.
	:	Mr. Sadashiv Tiwary, Advocate.
	:	Mr. Hiresh Karan, Advocate.
	:	Ms. Prachi Pallavi, Advocate.
	:	Ms. Shivani Dewalla, Advocate.
For the Respondent/s	:	Mr. K. N. Singh, ASGI.
	:	Mr. Anshuman Singh, Sr. SC, CGST & CX
	:	Mr. Shivaditya Dhari Singh, Advocate.

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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 : 29-01-2025

1. In the instant petition, petitioner has prayed for the following relief(s):-

> *"i) The order dated 19.03.2024 and also the summary of order (as contained in Annexure – P 4 series) passed by the respondent no.4 under*

Section 73(9) of the Act charging tax, interest and imposing penalty for the Financial Year 2018 – 19 without consideration of reversal of input tax credit of Rs.6.25 crores though admitting the same to be declared in the column of "other reversal head" (Table – 7 – H) and also without consideration of the Circular No.183/15/2022 – GST dated 27.12.2022 allowing input tax credit on the basis of the certificate of the supplier and of the chartered accountant beyond the terms of the show cause notice after expiry of the time limit set out in Section 73 (10) of the Act be set-aside and quashed.

ii) The Notification No. 09/2023 dated 31.03.2023 (as contained in Annexure – P6 issued by the respondent no.2 extending the time limit specified under sub Section (10) of Section 73 of the Central Goods and Services Tax Act, 2017 (hereinafter called the Act) for issuance of order under sub Section (9) of Section 73 of the Act for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized up to 31.03.2024 for the Financial Year 2018 – 19 being beyond the scope of powers under Section 168A of the Act being wholly without jurisdiction be quashed.

iii) The Notification No. 56/2023 dated 28.12.2023 (as contained in Annexure – P7) issued by the respondent no.2 extending the time limit specified under sub Section (10) of Section 73 of the Act for issuance of order under sub Section (9) of Section 73 of the Act for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized up to 30.04.2024 for the Financial Year 2018 – 19 being beyond the scope of powers under Section 168A of the Act being wholly without jurisdiction be quashed.

iv) For granting any other relief (s) to which the petitioner is otherwise found entitled to."

2. The petitioner has a statutory remedy of appeal before the Appellate Authority and without exhausting such remedy he has rushed to this Court. On this score, learned counsel for the petitioner pointed out Section 75(4) of Central Goods and Services Tax Act, 2017. It is necessary to reproduce Section 75(4) of Central Goods and Services Tax Act, 2017 which is as under:-

> *"75(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person."*

3. For the purpose of compliance to sub-section (4) of Section 75 of Central Goods and Services Tax Act, 2017 the concerned authority was required to hear the petitioner having regard to the fact that adverse order has been passed against the petitioner in the impugned order dated 19.03.2024. Perusal of the impugned order, there is no iota of material evidence to the extent that petitioner was provided opportunity of show cause notice along with his reply or explanation relating to proposed order dated 19.03.2024.

4. *Per contra*, learned counsel for the respondents resisted the aforementioned contention and submitted that show cause notice has been issued insofar as amount mentioned in the impugned order at paragraph no. 5.0. Learned counsel for the respondents submitted that the concerned file must contain issuance of show cause notice. It was also submitted that while passing impugned order personal hearing was given to the petitioner which has been recorded at paragraph no. 3.0. Therefore, the petitioner's contention that he has not been heard is incorrect.

5. Heard the learned counsels for the respective parties. Core issue involved in the present *lis* is whether petitioner is to be relegated to the Appellate Authority or not. Present writ petition is filed invoking extraordinary jurisdiction under Article 226 of the Constitution of India. Even litigant has a statutory remedy of appeal before the Appellate Authority, in that event in the ordinary course writ is not maintainable with certain exceptions, one of the exceptions is violation of principles of natural justice. Insofar as providing principle of natural justice is concerned, it is available in the statute namely sub-section (4) of Section 75 of Central Goods and Services Tax Act, 2017. Reading of the aforementioned statutory provision, it is crystal clear that before passing any adverse order an opportunity shall be provided to such person against whom adverse orders are likely to be passed.

6. Perusal of impugned order dated 19.03.2024, it is evident that petitioner has not been heard before passing adverse order insofar as paragraph no. 5.0 is concerned. Even assuming paragraph no. 3.0 of the impugned order is taken into consideration, perusal of paragraph no. 3.0 it is not evident as to whether petitioner has been issued notice particularly in respect of paragraph no. 5.0 of the impugned order. This is evident from paragraph no. 3.0. It is necessary to reproduce paragraph no. 3.0 of the impugned order dated 19.03.2024 which reads as under:-

> *"3.0* ***Personal Hearing:***
> *3.1 On the pursuance of letters for Personal Hearing issued on 16.01.2024, 30.01.2024 and 08.02.2024, the assessee have appeared on 15.02.2024 for personal hearing and submitted their written defense reply dated 07.02.2024. They have already submitted a defense reply dated 24.01.2024. Further, they have again submitted their additional defense reply on 21.02.2024. The all three written reply submitted by them are mentioned in above Para 2.1 to 2.7."*

7. Reading of the aforementioned paragraph, it is evident that it is only in respect of personal hearing. The respondents have not pointed out any proposal to pass adverse order on 16.01.2024, 30.01.2024 and 08.02.2024 and it is only for the purpose of appearance of the assessee-petitioner.

8. Learned counsel for the respondents submitted that before passing impugned order show cause notice has been issued insofar as proposed adverse order passed. Assuming that show cause notice was issued in respect of adverse order, insofar as paragraph no. 5.0 of the impugned order, in that event there is no reference in the impugned order insofar as issuance of show cause notice and so also seeking petitioner's explanation. Assuming that show cause notice was issued in that event there should have been a statement by the author of the impugned order dated 19.03.2024 to the extent that show cause notice was issued on a particular date, however, petitioner has failed to furnish his reply. In the absence of such material one has to draw inference that impugned order dated 19.03.2024 is in violation of sub-section (4) of Section 75 of Central Goods and Services Tax Act, 2017.

9. In the light of these facts and circumstances, the petitioner has made out a case so as to interfere with the impugned order dated 19.03.2024 passed by respondent no.4 and the same is set-aside.

10. Matter is remanded to the concerned authority to proceed in accordance with law, such exercise shall be completed within a period of six months from the date of receipt of this order, after adherence to the respective provisions.

11. Accordingly, CWJC No.7830 of 2024 stands allowed in part.

(P. B. Bajanthri, J)

(Sunil Dutta Mishra, J)

harish/-ritik/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.02.2025
Transmission Date	NA