IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9771 of 2025

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M/S. GREENTECH AUTO LLP incorporated under the Limited Liability Partnership Act, 2008 having its Office at Shop 3 and 4, Basement of Arpana Complex, Opp St. Micheal School Digha Patna Bihar 800011 through its Partner Mukesh Kumar Tiwary, Male, aged about 45 years, S/o Manbodh Tiwary, R/o 16C, Seal Lane, Near Tangra Mini Bus Stand, Tangra, District - Kolkata, West Bengal - 700015.

... ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna
2. The Assistant Commissioner State Tax Patna West Circle, Patna
3. The Joint Commissioner of Commercial State Taxes, Danapur, Patna West, Bihar.

... ... Respondents

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Appearance :

For the Petitioner/s : Mr. Deepak Kumar, Advocate
For the Respondent/s : Mr. Vikash Kumar, Standing Counsel-11

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

4 15-10-2025 Heard learned counsel for the petitioner and learned SC-11 for the State.

2. Although the writ application has been listed under heading 'For Orders on Petition' for hearing of the petition seeking grant of stay over the demand/recovery notice dated 04.01.2024 and 18.01.2024 issued by Respondent No. 3, with the consent of the parties, we have heard the writ application itself for final hearing and disposal of the same.

3. The petitioner in the present writ application has prayed for the following reliefs:-

"1. For issuance of writ in the nature of certiorari or any other appropriate writ or direction against the order reference no. ZD1005250170526 (APL-04) dated 21-05-2025 (Anx- P/9) passed by Learned Appellate Court of learned Additional Commissioner of state tax (Appeals), Commercial Tax Department, Patna West Circle, Danapur(1), whereby and where under he has rejected the appeal filed on dated 12-12-2023 vide ARN AD101223004804U (APL-01) and has affirmed the refund rejection Order No - ZD101123015146A Dated 13-11-2023 (Anx-P/5) passed by Joint commissioner of State Tax, Danapur 1, Patna West, of refund (Rs.1256341/-).

ii. To issue an appropriate writ, order, or direction in the nature of Mandamus thereby setting aside the impugned order dated 21.05.2025 and allow the refund merit.

iii. To issue an appropriate writ/order/direction in the nature of certiorari or any other writ directing the Respondents to keep in abeyance, the order dated 03.08.2024 (Anx-P/6) passed by Respondent No 3 under Section 73(9) of Bihar GST Act 2017 r/w Section 20 of IGST Act, 2017, because order issued by Learned appellate Authority dated 21.05.2025 is defective itself, because order issued beyond the show case notice and submission made by applicant is neither considered nor discussed, whereby and where under the refund amount of Rs. 28,40,366/- for the period April 2023 to September 2023 paid to the Petitioner towards Input Tax Credit has been directed to be recovered together with interest and penalty of Rs. 8.11,609/- on the ground of modus operandi.

iv. To issue an appropriate writ/order/direction in the nature certiorari or any other writ directing the Respondents to keep in abeyance, the order dated 05.09.2024 (Anx-P/6) passed by Respondent No 2 under Section 73(9) of Bihar GST Act 2017 r/w Section 20 of IGST Act, 2017, because order issued by Learned appellate Authority dated 21.05.2025 is defective itself, because order issued beyond the show case notice and submission made by applicant is neither considered nor discussed, where under the refunded amount of Rs. 57,18,156/- for the period April 2022 to March 2023 paid to the Petitioner towards Input Tar Credit has been directed to be recovered together with interest and penalty of Rs. 23,97,255/-on the ground of modus operandi,

v. To issue an appropriate writ/order/direction in the nature of Mandamus directing the Respondent authorities not to take any coercive / precipitative action against the Petitioner because until the finality with respect to the issue in hand is reached.

vi. For issuance of writ in the nature of mandamus or any other appropriate writ or direction to the respondent particularly learned Joint Commissioner of State Tax. Danapur, Circle not to take any coercive action against the petitioner on the pending his writ application before Hon'ble Patna High Court.

vii. For issuance of an appropriate direction or order to grant compensation apart from interest on delayed refund on account of misuse and abuse of authority by the GST Department and restricted fundamental right of trade.

viii. For issuance of any other appropriate writ or direction to the respondent for which he is otherwise entitled in eye of law."

4. On going through the materials on the record, this Court finds that this is the second round of litigation before this Court. Earlier, the petitioner moved this Court in CWJC No. 16656 of 2024 in which the following reliefs were prayed for:-

"(i) To issue an appropriate writ/order/direction in the nature of Mandamus directing the Respondent No. 2 to dispose of the appeal dated 12.12.2023 (ARN AD101223004804U) pending against order dated 13.11.2023 bearing ref. no. ZD101123015146A passed by Respondent No. 3 as expeditiously as possible whereby the refund application for the period August 2023 has been rejected on the ground of modus operandi;

(ii) To issue an appropriate writ/order/direction in the nature of Mandamus directing the Respondents to keep in abeyance, until disposal of the appeal as mentioned above, the order dated 03.08.2024 (Anx-P/8 series) passed by Respondent No. 3 under Section 73(9) of Bihar GST Act 2017 r/w Section 20 of IGST Act, 2017 whereby and whereunder the refund amount of Rs.28,40,366/- for the period April 2023 to September 2023 paid to the Petitioner towards Input Tax Credit has been directed to be recovered together with interest and penalty of Rs.8,11,609/- on the ground of modus operandi;

(iii) To issue an appropriate writ/order/direction in the nature Mandamus directing the Respondents to keep in abeyance, until disposal of the appeal as mentioned above, the order dated of 05.09.2024 (Anx-P/9 series) passed by Respondent No. 2 under Section 73(9) of Bihar GST Act 2017 r/w Section 20 of IGST Act, 2017 whereby and whereunder the refunded amount of Rs.57,18,156/- for the period April 2022 to March 2023 paid to the Petitioner towards Input Tax Credit has been directed to be recovered together with interest and penalty of Rs.23,97,255/- on the ground of modus operandi;

(iv) To issue an appropriate writ/order/direction in the nature of Mandamus directing the Respondent Authorities not to take any coercive/precipitative action against the petitioner until the finality with respect to the issue in hand is reached.

(v) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case."

5. After hearing learned counsel for the parties, this Court directed the Appellate Authority to grant proper opportunity of hearing to the parties and decide the appeal which was pending since 12.12.2023 within a period of three months from the date of receipt/communication of a copy of this order. This Court further directed that "Till such time the order is not passed by the Appellate Authority on the prayer of the petitioner, the impugned order dated 03.08.2024 (Annexure 'P/8 Series') and the order dated 05.09.2024 (Annexure 'P/9 Series') shall not be given effect to."

6. We have noticed from the reliefs prayed in the earlier writ application that in fact, with regard to the order dated 03.08.2024 passed by Respondent No. 3 under Section 73(9) of Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as the 'BGST Act, 2017') read with Section 20 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the 'IGST Act, 2016'), the petitioner only prayed for keeping the said order in abeyance until disposal of the appeal. With regard to the order dated 05.09.2024 (Annexure 'P/9 Series'), again similar relief was prayed for. It is evident that the orders as contained in Annexure 'P/8 Series' and Annexure 'P/9 Series' were not under challenge in CWJC No. 16656 of 2024.

7. Now that the appeal preferred by the petitioner has been disposed of by the Appellate Authority as per direction of this Court contained in its order dated 27.02.2025 passed in CWJC No. 16656 of 2024, the petitioner while assailing the said order of appeal chose to challenge the order dated 03.08.2024 and the order dated 05.09.2024 in this writ application. These orders are Annexure 'P/6' in the present writ application.

8. Learned Standing Counsel-11 for the State has pointed out that while against the order dated 21.05.2025 (Annexure 'P/9') passed by the Appellate Authority rejecting the appeal of the petitioner, the petitioner has a remedy of second appeal under Section 112 of the BGST Act, 2017, the two orders i.e. the order dated 03.08.2024 and the order dated 05.09.2024 are appellable under Section 107 of the BGST Act, 2017. It is also pointed out that the petitioner has challenged the orders as contained in Annexure 'P/6' at this belated stage in this writ application even as the petitioner did not challenge these orders in the first round of the writ application.

9. By filing I.A. No. 1 of 2025, the petitioner is seeking stay over the demand/recovery notice dated 04.01.2024 and 18.01.2024 issued by Respondent No.3 wherein demand has been made to the petitioner for payment of Rs.33,03,532/- and Res.79,74,243/- respectively which is refund credited to the petitioner on account of inverted tax structure under Section 54(3)(ii) of the GST Act for the period April 2023 to September 2023 and April 2022 to March 2023.

10. Learned SC-11 for the State submits that the two orders which are now sought to be challenged may not be allowed to be challenged in the present writ application as it would be barred by the principle of *constructive res judicata.* The petitioner had an opportunity to challenge those orders in the earlier round of litigation but the petitioner had not challenged those orders.

11. Having heard learned counsel for the petitioner and learned SC-11 for the State, we are of the considered opinion that as against the Order Reference No. ZD1005250170526 dated 21.05.2025 (Annexure 'P/9') passed by the Appellate Authority i.e. the Additional Commissioner of State Tax, Danapur-1, Patna West, Bihar, the petitioner has got a remedy of second appeal under Section 112 of the BGST Act, 2017.

12. Learned SC-11 has submitted that presently, the GST Tribunal is not duly constituted but keeping in view the several orders passed by this Court, the petitioner may avail the remedy of second appeal within the prescribed date of limitation as and when the Tribunal is duly constituted.

13. We agree with the said submissions as several such orders have been passed by this Court granting number of petitioners similarly situated to the present petitioner to avail their right of second appeal as and when Tribunal is constituted.

14. As informed by learned SC-11, during the intervening period, if required, the petitioner may also apply for stay of the demand arising out of the impugned order and the competent authority shall consider such request for stay on deposit of 10% of the demand amount.

15. Accordingly, we are of the view that the petitioner may file his remedy of second appeal under Section 112 of the BGST Act, 2017 and in case, any stay of demand is required, the petitioner may approach the competent authority for the same who will consider his request in accordance with law within a reasonable period.

16. So far as the challenge to the order dated 03.08.2024 and the order dated 05.09.2024 passed under Section 73(9) of the BGST Act, 2017 read with Section 20 of the IGST Act, 2017 are concerned, the petitioner may avail its statutory remedy under Section 107 of the BGST Act, 2017, if so advised.

17. If any such appeal is preferred within a period of 30 days from today, the Appellate Authority shall consider the same keeping in view the fact that the petitioner was pursuing his remedy before this Court. An appropriate order shall be passed in the appeal so filed, within a reasonable period.

18. With the aforesaid observations, this writ application and I.A. No. 1 of 2025 are disposed of.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

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