

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13674 of 2024

=====

M/s Sri Sai Food Grain and Iron Stors having GSTIN-10AQZPD5179J1ZG a proprietary concern having its office Village Bhore, Post-Bhore, Police Station-Bhore, Gopalganj, Bihar-841426 through its proprietor Gyanti Devi, Gender-Female, aged about 51 years, W/o Sri Prabhu Sah, Village-Bhore, Post-Bhore, Police Station-Bhore, Gopalganj, Bihar-841426.

... .. Petitioner/s

Versus

1. The State of Bihar through The Principal Secretary, State Tax, Bihar, Patna having its office at Kar Bhawan, Patna.
2. The Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
3. The Joint Commissioner of State Tax, Gopalganj Circle, Gopalganj.
4. The Deputy Commissioner of State Tax, Gopalganj Circle, Gopalganj.
5. The Assistant Commissioner of State Tax, Gopalganj Circle, Gopalganj.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Bijay Kumar Gupta, Advertisement
For the Respondent/s	:	Mr. Government Advocate-11

=====

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

(Per: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA)

Date: 25-04-2025

1. Heard learned Counsel appearing for the petitioner as well as the learned Counsel appearing for the respondents.

2. At the outset we would like to first deal with the issue relating to tampering/interpolation made by the Officer, Ms. Kumari Anu Soni, who on the relevant date i.e. 18.01.2024 had conducted the inspection of the petitioner's establishment in the capacity of Assistant Commissioner, State Tax and had prepared the order of seizure. By order dated 05.02.2025 we had



ordered for furnishing the original records relating to inspection and seizure said to have been conducted on 18.01.2024. After the original records relating to the present case was produced, we had the occasion to go through the same and we *prima facie* found that the original order of seizure had been tampered/interpolated. In the order of seizure (Annexure '1' to the Counter affidavit filed by Respondent no.3), as against Column No. (A)- Details of Goods Seized, the words '**As Per Physical Verification**' were not mentioned but in the original order of seizure the words '**As Per Physical Verification**' had been inserted/interpolated by Ms. Kumari Anu Soni who had signed and prepared the order of seizure. It is due to this reason that by order dated 26.03.2025 we had ordered for personal appearance of Ms. Kumari Anu Soni, who is now posted as Deputy Commissioner of State Tax. While physically appearing before this Court on 09.04.2025 when she was confronted with the above factual position she admitted that she had entered the words '**As Per Physical Verification**' in the original order of seizure. She also admitted to have done this tampering/interpolation in the original order of seizure when the present case was pending and the entire matter was subjudice. After having accepting her mistake she begged for apology. This



Court directed Ms. Kumari Anu Soni to file her personal affidavit admitting to have tampered/interpolated Annexure '1' i.e. the order of seizure and to give an undertaking that she will not commit such mistake in future. During the course of the day, personal affidavit was filed by Ms. Kumari Anu Soni (Deputy Commissioner of State Tax) and in para 12 and 13 she has submitted as follows:

"12. That it is submitted that apart all the submissions made above, the deponent have no previous experience of search and seizure as a team leader, therefore, while undertaking such exercise, noticing the huge gathering of the nearby local people she could not mention about the separate list of seized items as per physical verification at the appropriate and specified place of INS-02 i.e. Column (A)."

"13. That the deponent undertakes not to commit such mistake in future in official records and will be more cautions in future. Thus the deponent once again tenders her unconditional apology before this Hon'ble Court for any commission or omission".

3. Although the conduct of Ms. Kumari Anu Soni is a serious misconduct for which we could have ordered for initiating disciplinary proceeding against her but given the fact that she had no previous experience of search and seizure and



she being a young officer we are taking a lenient view in the matter by admonishing her, henceforth if she commits a misconduct of this nature then, taking a serious view of the matter, she should be subjected to a disciplinary proceeding for being appropriately punished by disciplinary authority or court of law.

4. So far as the merit of the case is concerned, the petitioner has challenged the demand letter dated 09.05.2024 issued by the Respondent no.4 (Annexure 'P-4' to the writ application) which is purported to have been issued under Section 74 (9) of BGST/CGST Act, 2017 demanding tax, interest and penalty to the tune of Rs.4432250.25 under CGST and, Rs.4432250.25 under BGST, thereby totalling to Rs.8864550.50 for the period April, 2023 to January, 2024. The petitioner has assailed this demand contending that it is based on an inspection/search carried out on 18.01.2024 of the petitioner's establishment, which as per the petitioner is in complete violation of the provision contained in Section 67(10) of BGST/CGST Act, 2017 read with Section 100(4) of the Code of Criminal Procedure, 1973 because as per the petitioner the inspection/search was made in absence of two independent witnesses. As per the petitioner, the search/inspection was also



in violation of Instructions No. 01/2020-21 GST-Investigation dated 02.02.2021, CBIC Gst. Investigation Wing wherein in para 2(vii) it has been mandated *“that the search authorisation shall be executed before the start of the search and the same shall be shown to the person In-charge of the premises to be searched and his or her signature with date and time shall be obtained on the body of the search authorisation. The signature of the witnesses with date and time should also be obtained on the body of the search authorisation”*. Since as per the petitioner the search/inspection was in violation of Section 67(10) of BGST/ CGST Act, 2017 therefore the demand dated 09.05.2024 based on such inspection was not proper and thus fit to be set-a-side.

5. *Per Contra*, the respondents have defended the inspection report dated 18.01.2024 which is at (Annexure ‘P-1’ to the writ application) whereas, the respondents have admitted that the order of seizure prepared on the same date i.e. 18.01.2024, a copy of which was given to the petitioner, was interpolated/ tampered by Ms. Kumari Anu Soni who had made the said document and was also leading the inspection team.

6. After having carefully heard the submissions of the parties and after having perused the relevant documents brought



on record particularly the inspection report (Annexure 'P-1' to the writ application) and the order of seizure (Annexure '1' to the Counter affidavit filed by Respondent no.3), we are of the view that the inspection/search was not carried out in accordance with Section 67 of the BGST/CGST Act, 2017 for the reasons explained hereunder.

7. Section 67 of BGST/CGST Act, 2017 specifically mandates an inspection to be conducted in accordance with the Code of Criminal Procedure. Section 100 of the Code of Criminal Procedure stipulates that there shall be two witnesses when the inspection is conducted. Learned Counsel for the respondents submitted that the names of the two independent witnesses are shown in the order of seizure (Annexure '1' to the Counter affidavit filed by the Respondent no.3) which he claims to be part of the inspection report dated 18.01.2024 (Annexure 'P-1' to the writ application). This contention on part of the learned Counsel for the Respondent is being noticed only to be rejected for the reasons that on careful perusal of the inspection report dated 18.01.2024 (Annexure 'P-1' to the writ application) it is evident that it has been signed by two witnesses, namely- Sri Sandeep Jaiswal and Sri Ram Pravesh Yadav. Sri Sandeep Jaiswal admittedly happens to be the son of the proprietor of the



petitioner and Sri Ram Pravesh Yadav happens to be the staff of the petitioner. Both are, therefore, connected to the petitioner and have no independent status as a witness. The inspection report, therefore, does not contain the names and signatures of two independent witnesses which is the mandatory requirement of Section 67 of the BGST/CGST Act, 2017. To cover up this serious deficiency, the respondents have mentioned the name of two persons, namely- Santosh Kumar, Barauli, Gopalganj and Ramashish Prasad, Gopalganj as witnesses in the order of seizure (Annexure '1' to the Counter affidavit filed by the Respondent no.3) and contended that they were the independent witnesses at the time of the inspection. Clearly this appears to be an afterthought done with the motive to simply cover-up the lacuna because if Santosh Kumar and Ramashish Prasad were present as independent witnesses at the time of inspection and seizure then why their signatures were not taken as independent witnesses on the inspection report and further as to why the order of seizure purported to have been prepared on the site of the inspection on 18.01.2024 did not contain the signature of the proprietor or their two representatives, namely- Sri Sandeep Jaiswal and Sri Ram Pravesh Yadav who had signed the inspection report. There is also nothing to co-relate that the



order of seizure actually prepared on the same date as there is no endorsement or any reference in the inspection report about the order of seizure being part of it. As observed above, the order of seizure appears to have been prepared not on the spot on 18.01.2024 but later only to cover up the serious lacunas existing in the inspection report wherein the presence of the two independent witnesses was not recorded which made the inspection/seizure unsustainable in law. Further, taking note of the fact that the order of seizure had been admittedly tampered/interpolated by Ms. Kumari Anu Soni who is the maker of the said document, further makes the order of seizure totally invalid and unreliable.

8. In the above circumstances, we find that the inspection was carried out without any independent witnesses and even the order of seizure is invalid due to tampered/interpolated documents, on both these counts they are against the provision as contained under Section 67 of the BGST/CGST Act, 2017 read with Section 100 of the Code of Criminal Procedure, 1973.

9. On the above reasoning, we set-a-side the demand order dated 09.05.2024 (Annexure 'P-4' to the writ application) which is based on the inspection said to have been carried out



on 18.01.2024, and we admonish Ms. Kumari Anu Soni, Deputy Commissioner of State Tax to not to tamper with any departmental/court record in future, failing which disciplinary authority or this court will be constrained to order for disciplinary action to be taken against her.

10. The writ petition stands allowed and all pending Interlocutory Applications shall stand disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Sinha, J)

Prakash Narayan

AFR/NAFR	AFR
CAV DATE	09.04.2025
Uploading Date	25.04.2025
Transmission Date	NA

