IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15748 of 2024

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M/s S.P. Singla Constructions Pvt. Ltd. a Private Limited Company having GSTIN- 10AAGCS5773B1ZP and its office at 5th Floor, Kanaj Brij Complex, Boring Road, Patna, Post- G.P.O., P.S.- Krishna Puri, Patna, Bihar-800001 through its Authorised Signatory Niraj Prasad, Gender- Male, aged about 44 years, Son of Shri Naresh Prasad, Resident of Mohalla- Banke Bazar, Post- Banke Bazar, Police Station- Banke Bazar, Dist.- Gaya, Bihar-824217.

... ... Petitioner

Versus

1. The Union of India through the Finance Secretary, Department of Revenue, Govt. of India, New Delhi.
2. The Government of India, Ministry of Finance (Department of Revenue), through the Director, CBIC, New Delhi.
3. The State of Bihar, through the Principal Secretary, State Tax, Bihar, Patna having its office at Kar Bhawan, Patna.
4. The Principal Secretary Cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
5. Deputy Commissioner of State Tax, Special Circle, Patna Central, Bihar, Patna.

... ... Respondents

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Appearance :

For the Petitioner	:	Mr. Bijay Kumar Gupta, Advocate
	:	Mr. Manish Kumar, Advocate
For the U.O.I	:	Mr. Additional Solicitor General
For the State	:	Mr. Vikash Kumar, S.C-11

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

6 27-02-2025 Heard learned counsel for the petitioner and learned Standing Counsel No. 11 for the State.

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

(I) For issuing of writ of certiorari or any other appropriate writ quashing/ setting aside the Order for Demand vide Case Id/ARN: AD100524005085S dated 14.05.2024 Process No-Nil dated 26.08.2024 (as contained in Annexxure-P2) and summary of the Order vide Reference No-ZD100824036628E, dated 27.08.2024(as contained in Annexure-P-2A) in the form of DRC-07 passed by the Respondent No-5 demanding tax, interest and penalty as the Demand Order is time barred in view of the provision of Section 73(9)&(10) BGST/CGST Act, 2017.

(II) For issuing a writ of certiorari or any other appropriate writ quashing/ setting aside the Notification No.56/2023 CT dated 28.12.2023 extending the time limit specified under Section 73(10) of the CGST/BGST Act, 2017 by virtue of the powers under section 168A of the CGST/BGST Act, 2017 which is unjustified as extension has to be for special circumstances mentioned in the section itself and said notification so issued by CBIC is ultra vires section 168A and there was no recommendation of GST Council which was mandatory requirement for purpose of issuance of said notification. Having twice extended the period by virtue of notification No.13/2022 CT dated 05.07.2022 and notification No.09/2023 CT dated 31.03.2023 no subsequent extension could be made by Respondent No-1 and 2 as there was no force majeure condition in Dec-2023.

(III) For issuing a writ of certiorari or any other appropriate writ quashing/ setting aside the Order for demand and summary of the order dated 27.08.2024 passed by the Respondent No.- 5 as the order is violative of Article 14 of the Constitution of India as the Respondent No-1 & 2 while issuing notification extending time line for passing orders for imposing tax, interest and penalty and no extension was made for availing input tax credit u/s 16(4) for the period 2019-2020 despite the country was in the grip of Covid-19 and this action is violative of Article 14 of the Constitution of India as beneficial provisions for the registered persons were not extended simultaneously for granting any relief (s) to which the petitioner is otherwise found entitled to in accordance with law.

(IV) For that the Demand order (P-2 & P-2A) which were passed in violation of section 75(4) under BGST/CGST Act, 2017 where demand orders were passed without issuance of notice of personal hearing in violation of section 75(4) under BGST/CGST Act,2017 which render the entire proceedings of Respondent No- 5 violative of principles of natural justice and thus liable to be set aside.

(V) For issuing of a writ of certiorari or any other appropriate writ quashing/ setting aside the Order for Demand *vide* Case Id/ARN: AD100524005085S dated 14.05.2024 Process No-Nil dated 26.08.2024 (as contained in Annexxure-P2) and summary of the Order vide Reference No-ZD100824036628E, dated 27.08.2024 (as contained in Annexure-P-2A) in form of DRC-07 passed by the Respondent No-5 demanding tax, interest and penalty amounting to Rs. 95,31,476.01 under the IGST, Rs. 7,53,62,211.07 under the

CGST and Rs. 7,53,62,211.07 under the BGST Act total amounting to Rs. 16,02,57,898.14 for the period APRIL 2019 to March -2020 in Form GST DRC-07 which were passed without issuing GST ASMT-10 under Rule 99 BGST/CGST Rule 2017 read with Section 61 BGST/CGST Act 2017 and this render the entire proceedings of the Respondent No- 5 violative of principles of natural justice and thus liable to be set aside.

(vi) For issuing a writ of certiorari or any other appropriate writ quashing/ setting aside the show cause notice (P-1 & P-1A) and Demand order (P-2 & P-2A) which were issued without issuance of pre-show cause notice in the Form of DRC-01A U/s 73(3) of BGST/CGST Act 2017 which render the entire proceedings of Respondent No- 5 violative of principles of natural justice and liable to be set aside.

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

3. This writ application has been preferred for setting aside the impugned orders and the demand orders on the grounds *inter alia* that while passing the impugned orders the respondents have not complied with the mandatory requirement of sub-Section (4) of Section 75 of the Central Goods and Service Tax/Bihar Goods and Service Tax Act (hereinafter referred in short as C.G.S.T and B.G.S.T Act.)

4. Learned counsel for the petitioner has drawn the attention of this Court towards the judgment of the Hon'ble Division Bench of this Court in the case of **M/s Barhonia Engicon Private Limited (C.W.J.C No. 4180 of 2024) and other analogous matters** decided on 27.11.2024 wherein it has been categorically held that the Assessing Officer has to issue notice providing an opportunity of hearing even if request for personal hearing has not been made by the Assesses. This has been held, a statutory mandate from which there is no escape.

5. Learned counsel for the petitioner has placed before this Court Annexure- 'P1A' which is summary of the show cause notice. With reference to the dates mentioned for submission of reply and for personal hearing, learned counsel for the petitioner points out that while the respondent Deputy Commissioner of State Tax fixed 14.06.2024 for submission of reply, a date of personal hearing was fixed 05.06.2024 which was even prior to filing of the reply. This, according to him, is not in the scheme of sub-Section (4) of Section 75 read with Section 73 of the CGST/BGST Act. The date of personal hearing was to be fixed after the reply was submitted by the petitioner and only in such cases were any adverse decision is contemplated against the petitioner.

6. On the other hand, learned counsel for the State submits that in the notice to show cause, the Respondent-Deputy Commissioner had fixed the date of personal hearing, no doubt before the date fixed for submission of reply but thereafter three dates were fixed for personal hearing.

7. Mr. Vikash Kumar, learned SC-11 submitted with reference to the statements made in paragraph no. 11 to his counter affidavit that the show-cause notice was followed by three communications dated 03.07.2024, 11.07.2024 and 18.07.2024 providing further opportunity of hearing, including personal hearing to the petitioner. As soon as, this submission was made by learned Standing Counsel-11, learned counsel for the petitioner has taken this Court through the statements made in paragraph no. 7 of the rejoinder filed on behalf of petitioner wherein there is a specific assertion that respondent no. 5 wrongly states that notices of personal hearing are annexed as

Annexure R/2/2, R/2/3 and R/2/4 respectively with the counter affidavits. It is stated in the rejoinder that no copy of notice is annexed there and respondent no. 5 is trying to mislead this Court by annexing something else with the counter affidavit. The petitioner has brought on record a copy of the screen shot of the portal which displays notices tab where notices issued for personal hearing are annexed. It is pointed out that on the portal no notice of personal hearing has been annexed.

8. The learned Standing Counsel-11 has, however, once again submitted that the fact that opportunity of personal hearing was given to the petitioner would be evident from the impugned order also wherein it is stated that an opportunity of personal hearing was given to the petitioner for furnishing requisite submissions *vide* reference no. ZD100724016388K dated 11.07.2024 on portal along with attached annexure and reference No. ZD100724027073Y dated 18.07.2024 and in response to this, above taxpayer's authorized person Sri Sang and Mahindra Kumar appeared for personal hearing and discussed the issues pointed out in the SCN for the said tax period and also submitted the relevant supporting documents.

9. The screen shot of the portal has been placed on record with the rejoinder of the petitioner at Annexure P-

14(Page-32 and 33 of the rejoinder). The learned counsel for the petitioner submits that in paragraph-7 of the rejoinder he has specifically asserted that after show cause notice dated 05.06.2024 and reply to the show cause notice, no notice of personal hearing was issued mentioning place, time and date of personal hearing.

10. Learned counsel for the State has placed on record a copy of the judgment of the Hon'ble Division Bench of this Court in case of **M/s Barhonia Engicon Private Limited (C.W.J.C No. 4180 of 2024) and other analogous matters,** as annexure to the counter affidavit of Respondent No. 5.

11. We have heard learned counsel for the petitioner and learned Standing Counsel-11 for the State. It is admitted at the bar that so far as the challenge to the Notification No. 56/2023-Central Tax and Notification No. 13/2022-Central Tax are concerned, the said challenge failed in the adjudication made by the Hon'ble Division Bench of this Court in the case of **M/s Barhonia Engicon Private Limited (C.W.J.C No. 4180 of 2024) and other analogous matters,** therefore, so far as, that challenge to the notification is concerned, the same is not being pressed before this Court and this Court has not gone into the same.

12. The solitary question on which the impugned orders on demand have been challenged at this stage for purpose of remand is non-compliance with the mandate of sub-Section (4) of Section 75 of the CGST/BGST Act. We reproduce sub-Section (4) of Section 75 hereunder for a ready reference:-

> "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."

13. It is evident on a bare reading of paragraph '46' of the judgment of the Hon'ble Division Bench in the case of **M/s Barhonia Engicon Private Limited** that it is statutory mandate to issue a notice providing an opportunity of hearing to the person likely to be affected by adverse order which may be passed by the respondent authority. What has been held in paragraph '46' of the judgment of the Hon'ble Division Bench is being quoted hereunder:-

> "Hence, when a reply has been submitted to the notice issued under Section 73 and if any adverse order is contemplated, without even a request for personal hearing, the Assessing Officer

has to issue a notice providing an opportunity of hearing. This is the statutory mandate, from which there is no escape".

14. This Court finds that in the present case the date of personal hearing was fixed on 05.06.2024 that is much before the date fixed for filing of reply i.e. on 14.06.2024.

15. In paragraph '5' of the writ application the petitioner has made statement that without considering the petitioner's reply properly and the documents available on record and without grant of personal hearing the respondent no. 5 passed the order of demand *vide* case no. ID/ARN: AD100524005085S dated 14.05.2024. In response of the said paragraph, in his counter affidavit respondent no. 5 (the counter affidavit is wrongly showing as filed on behalf of the respondent no. 2), it is stated that the perusal of the show cause notice annexed to the writ petition (Annexure-P1A) would show that opportunity of personal hearing is very much accorded to the petitioner and the date of personal hearing was fixed as 05.06.2024. We have already taken note of the averments made in paragraph '11' of the counter affidavit of Respondent No. 5. The three communications dated 03.07.2024, 11.07.2024 and 18.07.2024 which are purported to have been enclosed as

Annexure R2/2, R2/3 and R2/4 respectively, have not been brought on record.

16. A lot of contentions have been made on this point as to whether post filing of show cause reply any opportunity of personal hearing was given to the petitioner or not. It is evident that copy of the rejoinder of the petitioner was served upon to the office of learned Standing Counsel-11 as back as on 04.02.2025 but neither Annexure R-2/2, R-2/3 and R-2/4 have been brought on record nor any affidavit has been filed controverting the statements made in paragraph ‘7’ of the rejoinder.

17. Taking into consideration the pleadings available on the record, we would hold and declare that in this case the mandate of sub-Section (4) of Section 75 of the CGST/BGST Act has not been duly followed.

18. In result, we quash the impugned orders and demand. The matter is remitted to Deputy Commissioner of State Tax, Special Circle, Patna Central, Bihar, Patna (respondent no. 5) for passing a fresh order after giving a personal hearing to the petitioner. In order to cut short the delay which may take place in doing the formality of issuing notice, we fix 6th of March, 2025 at 11 AM. The petitioner must appear before respondent no. 5 on the said date and time for personal hearing. The respondent no. 5 shall pass an appropriate order after hearing the petitioner/authorized representative of the petitioner within one month from the date of hearing.

19. This writ application stands allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

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