# IN THE HIGH COURT OF JUDICATURE AT PATNA
**Civil Writ Jurisdiction Case No.16656 of 2024**

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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 Commissioner, Commercial Taxes Department, Government of Bihar, Patna.
2. The Additional Commissioner of State Tax (Appeals), Commercial Taxes Department, Patna West Circle, Patna.
3. The Joint Commissioner of State Tax, Commercial Taxes Department, Danapur, Circle-1, Patna West Bihar.

... ... Respondents

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**Appearance :**

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| For the Petitioner/s | : | Mr. Nikhil Kumar Agrawal, Advocate |
| | | Ms. Aditi Hansaria, Advocate |
| | | Mr. Yash Sahay, Advocate |
| For the Respondent/s | : | Mr. Vivek Prasad, Government Pleader-7 |

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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)**

5 27-02-2025 Heard learned counsel for the appellant and learned counsel for the State.

**2.** This writ application has been filed seeking the following reliefs:-

> "(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."

**3.** The petitioner is said to be a partnership incorporated under the provisions of Limited Liability Partnership Act, 2008 having its registered office in the State of Bihar. It is carrying on business related to manufacturing of e-rickshaws. The petitioner is registered under Danapur, Circle-1, Patna West, Bihar and it is his contention that in terms of Section 25(4) of the Central GST Act, 2017, an entity having two GST registrations on the same PAN number will be treated as distinct person and the transaction of goods between them will be treated as supply for which invoice has to be raised as per Section 31(1). It is stated that M/s Greentech Auto LLP Bihar and M/s Greentech Auto LLP West Bengal are distinct persons for the purpose of GST Act, 2017.

**4.** The case of the petitioner is that in the month of August 2023, the petitioner filed a refund application under Section 54 of the Bihar GST Act, 2017 and claimed an amount of Rs.12,56,341/- (CGST- Rs. 3,39,602/- + SGST- Rs.3,39,602/- + IGST- Rs.5,77,137/-) on account of ITC accumulated due to Inverted Tax Structure.

**5.** The Respondent No. 3, however, issued a show cause notice dated 13.10.2023. Reply to that was submitted by the petitioner on 24.10.2023. Respondent No. 3 rejected the refund application of the petitioner vide order dated 13.11.2023 in terms stated in the rejection order. Copy of the rejection order is on the record.

**6.** Being aggrieved by and dissatisfied with the said rejection order, the petitioner has preferred an appeal before Respondent No. 2. The said appeal was filed on 12.12.2023 and it was admitted on the same day.

**7.** At this stage, the grievance of the petitioner is that even as the representative/authorized person of the petitioner appeared for personal hearing on the date fixed in the matter but the said appeal has remained pending and during pendency of the appeal, the Respondent No. 3 issued two intimation forms. The first form was issued on 22.11.2023 initiating recovery process on refunded amount of Rs.28,40,366/- for the period April, 2023 to September, 2023. The second form was issued on 01.12.2023 initiating recovery process on refunded amount of Rs.57,18,156/- for Financial Year 2022-23 (April, 2022 to March, 2023).

**8.** The submission of learned counsel for the petitioner is that when the appeal has already been admitted by Respondent No. 2 and it is pending adjudication, there being no default on the part of the petitioner in putting appearance in the appeal to facilitate early disposal of the said appeal, the Respondent No. 3 was not required to act in haste for recovery of the amount in question.

**9.** Learned counsel for the petitioner has though attempted to make submissions on the merit of the case but considering the kind of reliefs prayed in the writ application, this Court is of the considered opinion that this Court need not go into the merit of the contentions as it would amount to going into all such issues which are still pending consideration before the Appellate Authority, therefore, we confine our consideration limited to the nature of reliefs prayed in the writ application.

**10.** A counter affidavit has been filed on behalf of Respondent No. 3. Respondent No. 3 has made a statement in paragraph ‘6’ of the counter affidavit that the hearing before the Additional Commissioner (Appeals), Patna West Division has been completed and the order is going to be passed very soon. The Respondent No. 3 has also sought to justify his orders which are under challenge in appeal.

**11.** As stated above, this is not the appropriate stage to deal with the merit of the case when the appeal is still pending.

**12.** We have been informed that the appeal is still pending. In such circumstance, we direct Respondent No. 2 to give appropriate opportunity of hearing to the parties and decide the appeal pending since 12.12.2023 within a period of three months from the date of receipt/communication of a copy of this order.

**13.** The petitioner is at liberty to file an appropriate application before the Appellate Authority within a period of four weeks from today for stay of the recovery undertaken by the Respondents vide Annexure ‘P/8 Series’ and Annexure ‘P/9 Series’. The Appellate Authority shall pass an appropriate order within a week thereon from the date of filing of the application.

**14.** 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.

**15.** This writ application stands disposed of accordingly.

**(Rajeev Ranjan Prasad, J)**

**( Ramesh Chand Malviya, J)**

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