IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1338 of 2026

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Rajnish Kumar, a Proprietor of M/s Raj Communication, Son of Shri Sanjay Kumar, resident of Village Bedhana, Post Bedhana, Thana Barh, Birhana, Barh, Patna, Bihar- 803213.

... ... Petitioner

Versus

1. Commissioner of CGST and Central Excise having its office at Central Revenue Building, (Annexe), Bir Chand Patel Marg, Patna- 800001.
2. Superintendent, CGST and Central Excise, Kankarbagh Range, Chanpura Palace, Bank Road, Gandhi Maidan, Patna-800001.
3. Superintendent, Group-05, Central Tax, Audit Circle, 9 Aadarsh Colony, Kidwaipuri, Patna- 800001.

... ... Respondents

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Appearance :

For the Petitioner	:	Mr. Hiresh Karan, Advocate
For the CGST & CX	:	Mr. Anshuman Singh, Sr. SC

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

5 16-07-2026 Heard learned counsel for the petitioner and learned Senior Standing Counsel for the CGST and CX.

2. This writ application has come up for final hearing on one of the contentions noticed by this Court in its order dated 29.04.2026. Since the order dated 29.04.2026 is a detailed order containing the relevant facts, the prayers made in the writ application and the pleadings available on the record, it would be appropriate to extract the entire order dated 29.04.2026 hereunder for a ready reference:-

> "Heard learned counsel for the petitioner and learned counsel for the CGST.

2. The petitioner in this writ application has been seeking the following reliefs:

> "(i) The show cause notice dated 18.06.2025 (as contained in Annexure- P 2 series) issued by the respondent no. 3 for the Tax Period 2018-19 to 2022-23 under Section 74 of the Central Goods and Services Tax Act, 2017 (hereinafter called the Act) for multiple assessment years in absence of any element of fraud, willful misstatement or suppression of facts to evade payment of tax in view of the binding statutory circular issued by the Central Board of Indirect Taxes that too after expiry of the period of limitation set out in Section 73 (10) of the Act to be set aside and quashed.
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> (ii) The order dated 07.10.2025 (as contained in Annexure-P3 series) and also the summary of order in Form GST DRC-07 for the Tax Periods 2018-19 to 2022-23 without grant of opportunity of hearing before any adverse decision being contrary to the statutory provisions contained in Section 75 (4) of the Act be set aside and quashed.
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> (iii) The recovery made by the respondent no. 2 from the electronic credit Ledger (as contained in Annexure-P4) on 18.11.2025 in the violation of the statutory provisions contained in the act and the guideline laid down in Sita Pandey versus the State of Bihar and Ors in CWJC 5407 of 2023 by this Hon'ble High Court be set aside and quashed with a direction to the said respondent to refund the recovered amount with interest.
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> (iv) For ganging any other relief(s) to which the petitioner is otherwise found entitled to."

3. Learned counsel for the petitioner submits that vide Annexure-'P/2' series the petitioner was served with a summary of show cause notice (in short as 'SCN') in Form GST DRC-01 for the tax period from April 2018 to March

2023 under Section 74 of the Central Goods & Service Tax Act, 2017 (hereinafter referred to as the 'CGST Act, 2017'). It is his submission that pursuant to the said SCN (Annexure-'P/2' series) before passing the final order (Annexure-'P/3') dated 07.10.2025, the respondents were obliged to give opportunity of personal hearing to the petitioner. In paragraph-14 of the writ application, the petitioner has made the following statements:

> "That the petitioner states that the Respondent no. 2 before reaching the adverse decision did not issue any notice to the petitioner for providing opportunity of hearing in terms of the statutory provisions mandated in sub Section 4 of Section 75 of the Act. In the matter of TATA projects limited versus Union of India & Ors. in C.W.J.C. No. 7830 of 2024 this Hon'ble High Court has held that before passing any adverse order an opportunity of shall be provided to such person against whom adverse orders are likely to be passed."

4. While going through the impugned order (Annexure-'P/3'), this Court noticed that the Assessing Officer has recorded in paragraph '2' of the impugned order as follows:

> "Date of Personal Hearing was granted on 10.07.2025, 18.07.2025 and 28.07.2025 to the taxpayer. Shri Ibrahim J Gadly, Chartered Accountant, authorized representative of the taxpayer appeared in PH on 28.07.2025 and submitted that the defence reply in written is the final submission of the case and they have nothing to say in addition to the said defence reply……"

5. When this Court called upon learned counsel for the petitioner to demonstrate from the pleadings in the writ application that he has challenged/assailed the fact stated in paragraph '2' of the impugned order, learned counsel

admits that in the writ application there is no pleading challenging the averments present in paragraph ‘2’ of the impugned order. Learned counsel, still continues to submit that this opportunity of personal hearing cannot be said to be in terms of the scheme of the CGST Act, as contained in Sub-section (4) of Section 75 of the CGST Act, 2017. It is his submission that a personal hearing is required to be given when the Assessing Authority decided to pass an adverse order. He has relied upon a decision of the learned co-ordinate Bench of this Court in the case of Tata Projects Limited Vs. Union of India & Ors. passed in C.W.J.C. No. 7830 of 2024 (Annexure ‘P/7’). It is his submission that the personal hearing given to the representative of the petitioner, as stated in paragraph ‘2’ of the impugned order, is not a compliance with the mandate of Sub-section (4) of Section 75 of the CGST Act, 2017.

6. We are, however, not persuaded to accept the submission of learned counsel for the petitioner. It is evident from the records that the SCN (Annexure- ‘P/2’) has been issued under Section 74 (1) of the CGST Act, 2017. Under the scheme of Section 74 of the CGST Act, 2017, the proper officer has to determine the amount of tax, interest and penalty due from the person on whom SCN has been served, after considering the representation, if any, made by that person. Sub- section (9) of Section 74 of the CGST Act, 2017 is quoted hereunder for a ready reference:-

> “74. (9) The proper officer shall, after considering the representation, if any, made

> by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order."

7. Section 75 of the CGST Act has been enforced w.e.f. 28.06.2017. This section starts with a heading "general provisions relating to determination of tax". For the purpose of this case, Sub-section (4) of Section 75 is required to be taken note of hereunder:

> "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."

8. It is evident on a bare reading of Sub-section (4) of Section 75 of the CGST Act, 2017 that an opportunity of hearing has to be given wherever a request has been received in writing from the person chargeable with tax of penalty. The case of the petitioner is not covered under this part. The second part of Sub-section (4) of Section 75 mandates an opportunity of hearing to be given to the person chargeable with tax or penalty where any adverse decision is contemplated against such person. It is, thus, evident on a conjoint reading of Section 74 and Section 75 of the CGST Act, 2017 that after service of SCN and on receipt of the representation from the person chargeable with tax, if the Assessing Authority contemplates passing an adverse order then an opportunity of personal hearing is to be given. In the present case, this procedure has been followed by the Assessing Authority inasmuch as after receipt of the response of the petitioner, the Assessing Authority granted three opportunities of personal hearing on

10.07.2025, 18.07.2025 and 28.07.2025 to the tax-payer. Sri Ibrahim J Gadly, Chartered Accountant an authorized representative of the tax-payer appeared in personal hearing on 28.07.2025 and made a submission that the defence reply in written is the final submission in the case and nothing more is to be said in addition to the said defence reply. This Court, therefore, understands that the mandate of Sub-section (4) of Section 75 of the CGST Act, 2017 has been fully complied with. In fact, requirement of giving a personal hearing arises only when the Assessing Authority contemplates passing an adverse order.

9. A far fetched submission has been made by learned counsel for the petitioner submitting that the personal hearing was given on 28.07.2025 but the impugned order (Annexure-'P/3') has been passed on 07.10.2025, therefore, the Assessing Authority has taken a decision to pass an adverse order on 07.10.2025 hence, he was required to give a personal hearing once he made up his mind to pass an adverse order. In our opinion, this is a completely misconceived and misplaced submission. The opportunity of personal hearing is to be given to an assessee immediately after the Assessing Officer contemplates passing an adverse order. By no stretch of imagination, it can be said that the hearing is to be given once again. This would amount to adding something to the statute which are not there. The Judgment in case of Tata Projects Limited does not say so.

10. In our considered opinion, the statements

made in paragraph ‘14’ of the writ application is not only misleading but would amount to making a false statement in the writ application. We keep it open to impose an appropriate cost for this reason at appropriate stage.

11. A second submission has been made by the learned counsel for the petitioner saying that even if the impugned order (Annexure- ‘P/3’) is not interfered with, the respondents’ action in realizing the amount under the impugned order (Annexure- ‘P/3’) within 1 ½ month from the date of the impugned order cannot be justified. It is submitted that the appellant had an opportunity to prefer an appeal within a period of three months under Section 107 of the CGST Act, 2017. In his submission, the judicial pronouncements are there on the subject governing this issue whereunder it has been held that the taxing authority would not be justified in taking coercive means to recover the amount before expiry of the statutory period within which remedy of appeal may be applied for.

12. Mr. Anshuman Singh, learned counsel for the Department of CGST submits on this point that he would require an instruction from the respondents, particularly with respect to the documents enclosed by the petitioner from page- 76 to page-85 of the writ application.

13. As prayed, list this matter on 11.05.2026 under the same heading maintaining its position.

14. Mr. Anshuman Singh shall appraise this Court of the taken instruction.”

3. After the aforesaid order was passed, a counter affidavit has been filed on behalf of the respondents, followed by a rejoinder to the counter affidavit on behalf of the petitioner, a supplementary affidavit on behalf of the petitioner then a supplementary counter affidavit on behalf of the respondents and second supplementary counter affidavit on behalf of the respondents. In the nature of the order supposed to be passed at this stage, we need not go into the merit of the contentions.

4. Learned counsel for the petitioner submits at this stage that he may be allowed to withdraw this writ application with liberty to file an appeal before the competent authority/appellate authority in terms of Section 107 of the Central Goods and Services Tax/Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as the 'CGST/BGST Act').

5. Learned counsel submits that the present writ application was preferred after a period of three months from the date of the impugned order (Annexure- '3') but within a period of twenty days thereafter. In this regard, learned counsel submits that the Appellate Authority has been conferred with power under sub-Section (4) of Section 107 of the CGST/BGST Act to condone a delay up to a further period of one month on showing sufficient cause for not presenting the appeal within the period of three months.

6. Learned Senior Standing Counsel for the CGST and CX submits that vide order dated 29.04.2025, this Court has decided one of the issues raised by learned counsel for the petitioner. Since the said order on that aspect of the matter has attained finality, it would not be left open for the petitioner to agitate the same and one issue before the Appellate Authority.

7. We agree with the submission of learned Senior Standing Counsel for the CGST and CX. While disposing of this writ application at this stage, this Court grants liberty to the petitioner to seek his remedy of appeal before the Appellate Authority within a period of thirty days from today. If such an appeal is preferred together with an application seeking condonation of delay, the same will be considered keeping in view that the petitioner was pursuing this writ application before this Court since 27.01.2026. Therefore, the period from 27.01.2026 till today shall not come in the way of the petitioner by way of limitation and while counting the limitation and the further period of one month, this interregnum period shall be excluded. All contentions except the one already decided by this Court shall remain open for consideration by the Appellate Authority.

8. Learned counsel for the petitioner has submitted that since the recovery was made within the statutory period available for filing the appeal, this Court should direct for refund of the amount to the petitioner.

9. This submission of learned counsel for the petitioner would not be acceptable to us for the simple reason that the petitioner did not prefer a proper writ application within the statutory period of three months which was available to him for filing the appeal. The writ application has been registered after removal of defects on 27.01.2026 i.e. much after the period of limitation of three months for filing of the appeal. For this reason alone, we refrain from passing any order directing refund of the amount.

10. This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

(Sunil Dutta Mishra, J)

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