IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5244 of 2025

CNR No. BRHC010296082025

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Shree Durga Roller Flour Mills Private Limited a company registered under companies Act, 1956 having its office at C/o Bhanu Praksh Saragoi, Son of Satya Narayan Prasad Saraogi, G B Road, Gaya, Bihar- 823001 through its authorized signatory Shri. Bijay Prakash Saraogi (Male, aged about 68 Years) Son of Shri. Satya Narayan Saraogi, resident of 75, Gautam Budh Road Gaya, Bihar- 823001.

... ... Petitioner/s

Versus

1. State of Bihar through Commissioner of State Tax, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Dy. Commissioner of State Tax, Gaya 2, Magadh Bihar.
3. Asst. Commissioner of State Tax, Gaya 2, Magadh Bihar.
4. Asst. Commissioner of State Tax (Audit), Magadh Division, Gaya.
5. Canara Bank through its Branch Manager, having its Branch at Gaya GB Main Road, Gaya.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. D.V. Pathy, Sr. Advocate Mr. Hiresh Karan, Advocate Mr. Sadashiv Tiwary, Advocate Ms. Shivani Dewalla, Advocate
For the Bank	:	Mr. Rajan Ghoshrave, Advocate
For the Respondent/s	:	Mr. Vivek Prasad, GP-7

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
and
HONOURABLE MR. JUSTICE VIKASH KUMAR

JUDGMENT AND ORDER
C.A.V

(Per: HONOURABLE MR. JUSTICE VIKASH KUMAR)

Date : 19-11-2026

Heard Sri D.V. Pathy, learned Senior counsel for the petitioner, Sri Vivek Prasad, learned Government Pleader No. 7

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for respondent department and Mr. Rajan Ghoshrave, learned Counsel appearing for the Canara Bank.

2. In present case, the petitioner has prayed for quashing of order dated 27.04.2024, passed by respondent no. 2 i.e., the Deputy Commissioner of State Tax, Gaya 2, Magadh, Bihar under Section 73(9) of Bihar Goods and Services Tax Act, 2017. It further prays for quashing of notice dated 08.01.2025, attaching the bank account of the petitioner maintained with the bank for recovery of whole of the amount of tax in dispute, on the ground that the impugned order having passed without any opportunity of being heard in the matter.

3. Learned counsel for the petitioner submits that the petitioner is a private limited company and is engaged in the business of production and sale of unbranded atta, maida and sooji. It is small-scale industry registered under the Industrial Development Authority and for the purpose of setting of industry has been granted a long-term lease of industrial land by Bihar Industrial Area Development Authority at Gaya. The petitioner is registered under the trade name of Shree Durga Roller Flour Mills Private Limited, to manufacture flour of different description as mentioned in HSN Code 1106, 1104, 2302 and 1102.

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4. The petitioner for period 2018-19 has filed its return in the GSTR-3B and disclosed its turn over in column 3.1 (c) as nil rated, exempted. In monthly return in GSTR1 for period 2018- 19, the petitioner has given full description of outward supplies under the category of exempted and non-GST supplies.

5. A notice in From GST ADT-01 for period 2017-18, and 2018-19 dated 02.02.2022, was issued by respondent no. 4 for conducting audit and was directed to produce the annual audit report, directors report with all schedules viz, profit and loss account balance sheet etc. notes to the accounts, trial balance and the other documents if, deemed relevant. The respondent no. 3, upon verification, has recorded its finding of fact that the petitioner is engaged in business of running a flour mill, which is exempted from tax. It has not utilised input tax credit available in GSTR2A and has recommended for initiation of proceeding of penalty under Section 47 of the Act for non-filing of return in Form GSTR9C and uploaded issued order in Form GST ADT-02 on the portal.

6. Learned counsel for the petitioner submits that, based on the discrepancies for period 2018-19, a proceeding under Section 73 of the BGST/CGST Act 2017, was initiated,

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intimating notice in Form DRC-01A was issued for payment of tax under CGST/SGST along with interest and penalty by 05.09.2023. And on failure of the petitioner to make payment of the amount ascertained in Form DRC-01A, a notice was issued to the petitioner in DRC-01, under Section 73(1) of the Act, vide notice dated 11.12.2023. In the notice, it has specifically been stated that it being the manufacturer of atta, maida and sooji which is taxable under the Notification no. 27/2017-Central Tax (Rate) dated 22.09.2017, Notification No. 1/2017, Central Tax (Rate) and Notification no. 2/2017. The notice quantifies the amount of tax, interest and penalty.

7. Learned counsel for the petitioner submits that, on 19.03.2024, it has submitted its reply in Form DRC-06, but the respondent no. 2 without due consideration of the reply and without issuing any notice as mandated in section 75 (4) of the BGST/CGST Act, passed an order quantifying demand of tax, interest and penalty based on his own conclusions.

8. Learned counsel for the petitioner further submits that the respondent authorities in order to recover the whole of the amount of tax, attached the bank account of the petitioner maintained with the Canara Bank, Gaya.

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9. Learned counsel for the petitioner submits that in the impugned order, it has wrongly been noted that, the petitioner has not filed an affidavit with the jurisdictional Commissioner of State Tax/jurisdictional Authority as regard his voluntarily forgoing his actionable claim or enforceable right. Notification no. 27/2017- the Central Tax (Rate) dated 22.09.2017, only refers to filing an affidavit with the Jurisdictional Commissioner of Central Tax. It submits that in compliance of the Legal Metrology Act, 2009 read with Rule 6 of the rules it has printed its name and address on the packaged unit. It has made such disclaimer in the invoice and also in the unit container. It submits that, in view of the disclosure in the invoice of its disclaimer, it had substantially complied to the amended notification. In terms of the notification, the required affidavit was required to be filed with the Jurisdictional Commissioner of the Central Tax, whereas it fell under the territorial jurisdiction of the Commissioner of a State Tax, which cannot be complied with. As there is no requirement in the notification to file an affidavit before the Commissioner of State tax therefore, the conclusion of the respondent no. 3 that the petitioner did not file such an affidavit with the jurisdictional Commissioner of State tax run beyond the contemplation in the

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amended notification and on this ground alone the impugned order passed by the respondent no. 3, on merit has to be set aside.

10. Learned counsel for the petitioner submits that, in accordance with the Legal Metrology Act, 2009, it has inscribed its name on the packaged unit container. The said Act mandates mention of the name and address of the manufacturer on the unit container and in the unit container, it has also maintained that it has no actionable claim or enforceable right on the product.

11. Learned counsel for the petitioner submits that respondent no. 3 after conduct of the hearing in assessment proceeding proceeded to draw his conclusion without issuance of any notice mandated under section 75(4) of the ACT, which requires an opportunity of hearing where an adverse decision is contemplated against such person.

12. Referring Notification No. 1/2017, Central Tax (Rate) dated 28.06.2017, learned counsel for the petitioner submits that at serial no. 54 under the chapter/heading/sub-heading tariff item 1101 and 1102 provide for the rate of tax at the rate of 2.5 % in respect of goods specified in Schedule I A, reading of the said two entries in the notification would show that wheat or meslin flour, cereal flour other than the one

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mentioned therein put up in unit container and bearing a registered brand name, which is taxable at the rate of 2.5%, both under CGST/SGST Act totaling 5%. Further, the Central Government on recommendation of council exempted intra-State supplies of goods of the description given in Notification No. 2/2017 dated 28.06.2017, reading of the entries would show that wheat or meslin flour and cereal flour other than the goods of description given therein would be exempted from tax. The exception of the goods carved out in the said two entries are clearly discernible with the unit containers containing a registered brand name. In other words, the goods of the description given under the said two entries would be liable to tax only in cases where they are put up in a unit container, which contains a registered brand name. Further referring notification issued by Central Government, vide Notification No. 27/2017, Central Tax (Rate), dated 22.09.2017, amended Notification No. 1/2017, submits that it has not taken any registration under Trade Marks Act, 1999, Copyright Act, 1957 or under any law for the time being in force in any other country as on 15.05.2017, as per requirement of Clause (i)(a).

13. Learned counsel for the petitioner submits that the registered brand name is only explained to be a brand name as

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on 15.05.2017, under the Trade Marks Act, 1999, or the Copyright Act, 1957. Further insertion in the notification number 1/2017, the Central Tax (Rate), dated 28.6.2017, is insertion of paragraph 2, by way of an Annexure in respect of foregoing an actionable claim or an enforceable right on a brand name. The Annexure inserted by the notification dated 22.09.2017, is as under-

> *"For foregoing an actionable claim or enforceable right on a brand name, -*
>
> *(a) the person undertaking packing of such goods in unit containers which bear a brand name shall file an affidavit to that effect with the jurisdictional commissioner of Central Tax that he is voluntarily foregoing his actionable claim or enforceable right on such brand name as defined in Explanation (ii)(a); and*
>
> *(b) the person undertaking packing of such goods in unit containers which bears a brand name shall, on each such unit containers, clearly print in indelible ink, both in English and the local language, that in respect of the brand name as defined in Explanation (ii) (a) printed the unit containers he has foregone his actionable claim or enforceable right voluntarily."*

Accordingly, the effect of amendment *inter alia* is that in Schedule I against serial no. 54 and 55 the words "put up in

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unit container and bearing a registered brand name" or bearing a brand name on which actionable claim or enforceable right in a court of law is available is incorporated. The explanation for clause (ii) incorporates in name or mark, such as symbol, monogram, label, signature or invented word or writing, which is used in relation to such specified goods for the purpose of indicating or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person. The Annexure inserted in the notification required an affidavit to that effect filed with the jurisdictional Commissioner of central tax specified that he is voluntarily forgoing his actionable claim or enforceable right on such brand name and that the same is printed indelible ink both in English or local language.

Thereafter, mere printing of the name and address on the packaging of products the packaged commodities may not be treated as branded goods. Even otherwise, such disclaimer being on the packaged unit coupled with the fact that there is no such requirement to file an affidavit before the Commissioner of State Tax in the notification, the conditions laid down in the said notification already stands satisfied. Further, the presumption of

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respondent no. 3 in his order that the petitioner has not foregone its actionable claim or enforceable, right is wholly without any basis. Such presumption is not warranted in the notification. Therefore, the order of the respondent no. 3, subjecting the exempt commodity to tax run contrary to the notification itself.

14. At this juncture, persuaded by the submission on behalf of petitioner to the extent that it was not required to file an affidavit before the Commissioner of State Tax in terms of Notification No- 27/2017, Central Tax (Rate), dated 22.09.2017; this Court vide order dated 23.07.2026, asked Mr. Vivek Prasad, learned GP-7 to produce the matching notification, if any, issued by State GST Department on next date of hearing on 28.07.2026.

15. Mr. Vivek Prasad, learned GP-7 on 28.07.2026, in compliance, produced the copy of Notification No-27/2017-State Tax (Rate) dated 21.09.2017, published in the Extraordinary Bihar Gazette vide S.O. 189 dated 21.09.2017 which in specific terms requires filing of affidavit with the Jurisdictional Commissioner of State Tax.

16. With crumbling of main argument to the extent that the petitioner is not required to file an affidavit with Jurisdictional Commissioner of State Tax, the learned counsel for the petitioner relying on the judgment passed by Madras

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High Court, dated 15.06.2026, in the case of **M/s Guru and Co. v. Union of India and Others, [W.P. (MD) No. 14115 of 2022]**. Thereafter submits that Notification No- 27/2017- Central Tax (Rate) dated 22.09.2017 has been interfered and has been declared ultra vires to limited extent. He thereafter submits that the provision of section 75(4) of the BGST/CGST Act 2017, mandates issue of notice in case where an adverse decision is to be taken. The impugned order run contrary to the mandatory statutory provisions contained in Section 75(4) of the Act.

In the impugned order, there is a record of finding that the petitioner has effected composite supply of miling service and on that basis holding that it is liable to pay tax at the rate of 5% is beyond the scope of show cause notice and the presumption in order of such composite supply without issue of a notice calling upon explanation run counter to settled law and also section 75(4) of the Act and is fit to be set aside. By pressing I.A. No- 01/2026, he contends that issuance of notice dated 28.08.2023 (Annexure 8) is in contravention of provision of Section 65(7) of the BGST/CGST Act, 2017.

17. Per Contra, Sri Vivek Prasad, learned GP-7, appearing for the respondent department submits that the petitioner being manufacturer and seller of branded atta, maida,

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sooji has filed return for period 2018-19, and on perusal of the returns filed and material available on record/GST portal, it was detected by the Assessing Authority that the petitioner has claimed huge exempt turnover on account of sale of aforesaid items, and the claim was not corroborated by the evidence. In fact, the petitioner was claiming an exemption of tax on sale of branded products sold in unit container, which are exigible to GST. It was also found that the petitioner has not got its manufacturing facility registered as its additional place of business with the respondent authorities. Indicating such discrepancies notice in Form DRC-01 was issued to the petitioner, which was replied by the petitioner, which was found not acceptable and the proceeding resulted into passing of the impugned order dated 27.04.2024.

18. Learned counsel for the respondent department submits that against the impugned order dated 27.04.2024, the petitioner has an alternative remedy of appeal available under the provision of section 107 of the BGST/CGST Act, 2017. Instead, it has filed the present writ application after a delay of almost 11 months, which is fit to be dismissed on the ground of delay.

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19. Learned counsel for the respondent departments submits that the claim of the petitioner that it sold unbranded atta, maida is false. In fact, the petitioner has sold branded products as is evident from the labeling of the bag containing the products which were sold by the petitioner. Branding is corroborated by the photo of the bag, (it forms as Annexure-A series) to the counter affidavit. The findings under the provision of section 65 of BGST/CGST Act 2017, is a nature of recommendation, and it is not binding on the proper officer, exercising power under Section 73 of the CGST/BGST Act, 2017.

20. Learned counsel for the respondent department submits that it is an admitted position that the petitioner was served with pre-SCN intimation dated 28.08.2023, and service of show cause notice dated 11.12.2023. The claim of the petitioner that the supply made by it were exempt was not found sustainable in as much as the petitioner has sold branded products like maida in unit containers bearing the brand of the petitioner. The reply of the petitioner to the show cause notice in Form DRC-06 was found devoid of the any substance and on failure to on part of the petitioner to file statutory appeal under the provision of Section 107 of the BGST/CGST Act 2017, the

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respondent Authority have no option left than to initiate the recovery proceeding.

21. Learned counsel for the respondent department submits that vide Notification No. 27/ 2017, Central Tax (Rate), dated 22.09.2017, exemption from tax was made available to a taxpayer who voluntarily forego any actionable claim or enforceable right in respect of the brand name of its products. The petitioner has not complied with the condition stipulated in Notification No. 27/2017, Central Tax (Rate) and has not submitted any affidavit before the State Jurisdictional Commissioner, to the effect that it has voluntarily forgone actionable claim or enforceable right with respect to its brand name. The claim of the petitioner that it has got the same printed on the packaging unit of its product is also false as is evident from the Annexure-A, which depicts the printing on the packaging unit of its product.

22. Learned counsel for the respondent department relying on the Judgment passed by Hon'ble Supreme Court in the matter of **Grasim Industries Ltd. v. Collector of Customs, Bombay**, reported in **(2005) 3 SCC 479**, held that the use of a trade name or company name can constitute branding if it indicates the source or origin of goods. Therefore, finding of the

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Assessing Officer that the petitioner was selling branded product in a packaged container is right.

23. As far as grant of personal hearing to the petitioner, the learned counsel for the respondent department submits that the show cause notice in a specific terms has provided the opportunity of personal hearing to the petitioner on 10.01.2024, but it has failed to avail the same. The petitioner against the impugned order, has an alternative remedy of appeal under Section 107 of the BGST/CGST Act, which it has failed to avail and instead has filed the present writ application after a delay of almost 11 months.

Consideration

24. Heard the parties, on contention of the petitioner that it was not granted the opportunity of personal hearing as contemplated under the provision of Section 75(4) of BGST/CGST Act 2017, despite submission of its reply in Form DRC-06 and the proper officer is mandated to serve notice in contemplation of adverse decision, this Court primarily was of the view to remand the matter to the proper officer but on insistence of the petitioner that the remand of matter will not suffice, it requires interpretation, of the notification issued by the

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Central Government, this Court is persuaded for adjudication of the issue raised in present writ application.

In present case, the petitioner who happens to be manufacturer/seller of unbranded atta, maida and sooji, for period 2018-19, has filed its return in Form GSTR-1/GSTR-3B with description of outward supplies under the category of exempted and non-GST supplies. Whereas as per the respondent department, the petitioner is claiming an exemption of tax on sale of branded products in unit container, which are exigible to GST. The bone of contention between the petitioner and respondent Department is compliance/non-compliance of Notification No-1/2017-Central Tax (Rate) dated 28.06.2017 (Annexure-P/12), Notification No-2/2017-Central Tax (Rate) dated 28.06.2017 (Annexure-P13) and Notification No- 27/2017 dated 22.09.2017 (Annexure-P/14).

25. Therefore, the issue for consideration by this Court is-

Whether the petitioner is entitled for exemption under Notification No-1/2017- Central Tax (Rate) dated 28.06.2017, read with Notification No-2/2017- Central Tax (Rate) dated 28.06.2017 and to be read with Notification No- 27/2017, dated 22.09.2017, (corresponding State notification being Notification

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No- 27/2017, State Tax (Rate) dated 21.09.2017) or not?

26. The relevant part of the abovementioned notification for the purposes of adjudication are reproduced herein below:-

(4) Notification no- 1/2017 Central Tax (Rate) dated 28.06.2017; in exercise of power conferred under Section 9(1) of CGST Act 2017, the Central Government notified rate of Central Tax as 2.5% on the goods specified in Schedule I.

Entry 54 of the Schedule I read as follows:-

Wheat or meslin flour put up in unit container and bearing a registered brand name.

Explanation- For the purpose of this notification-

(i) The phrase "unit container" means package, whether large or small (for example- tin, can, jar, box, bottle, bag or carton, drum or barrel, or canister) designed to hold a predetermined quantity or number, which is indicated on such package.

(ii) The phrase "registered brand name" means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented words or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of

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trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person, and which is registered under the Trade Marks Act,1999.

(B) Notification No-2/2017 Central Tax(Rate) dated 28.06.2017, in exercise of power under Section 11 of CGST Act 2017, exempted certain goods-

Entry 73 of the Schedule I read as follows:-

Wheat or meslin flour (other than those put up in unit container and bearing a registered brand name).

The meaning of the word “Unit Container” and “registered brand name” in explanation of this notification is similar to Notification No-1/2017 Central Tax(Rate) dated- 28.06.2017.

(c) Notification No. 1/2017 – Central Tax (Rate) dated 28.06.2017 was amended by Notification No- 27/2017 Central Tax (Rate) dated 22.09.2017, and so far as present case is concerned, against serial number 54, the words.

(A) “put up in unit container and bearing a registered brand name” was substituted by

“put up in unit container and,

(a) bearing a registered brand name; or

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(b) bearing a brand name on which an actionable claim or enforceable right in a court of law is available [other than those where any actionable claim or any enforceable right in respect of such brand name has been voluntarily foregone, subject to the conditions as in the Annexure]"

(H) after paragraph 2, the following Annexure was inserted.

Annexure

For foregoing an actionable claim or enforceable right on a brand name;-

(a) the person undertaking packing of such goods in unit containers which bear a brand name shall file an affidavit to that effect with the Jurisdictional Commissioner of Central Tax that he voluntarily foregoing has actionable claim or enforceable right on such brand name as defined in Explanation (ii) (a); and

(b) the person undertaking packing of such goods in unit containers which bear a brand name shall, on each such unit containers, clearly print in indelible ink, both in English and the local language, that in respect of the brand name as defined in explanation.

(ii) "(a) printed on the unit containers he has foregone his actionable or enforceable right voluntarily."

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(G) in the explanation, for clause (II), the following shall be substituted, namely:-

(ii) (a) the phrase “brand name” means brand name or trade name, that is to say, a name or a mark, such as symbol, monogram, label, signature, or invented word or writing which is used in relation to such specified goods for the purpose of indicating or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

(b) the phrase “registered brand name” means,-

(A) A brand registered as on the 15th May 2017 under the Trade Marks Act, 1999, irrespective of whether or not the brand is subsequently de-registered;

(B) a brand registered as on 15th May 2017, under the Copyright Act, 1957

(C) a brand registered as on 15th May 2017, under any law for the time being in force in any other country”;

27. As far as present case is concerned- admittedly petitioner is manufacturer/seller of atta, maida and sooji, put up in unit container (50 kg bag, Annexure-A to the counter affidavit filed by respondent department) which as per Notification No.

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01/2017- Central Tax (Rate) dated 28.06.2017, is covered by Sl. No. 54, Tariff item- 1101 Schedule I and attracts rate of Tax @ 2.5 against CGST and as per matching notification published in Bihar Gazette Vide S.O.-189, attracts SGST @ 2.5 i.e., total tax @ 5%.

The petitioner claims exemption from payment of Tax in terms of Sl. No. 73 of Notification No. 2/2017- Central Tax (Rate) dated 28.06.2017, corresponding Notification being published in Bihar Gazette Extraordinary vide S.O. No. 67 dated 29.06.2017, which in plain and simple terms has no application in case of petitioner. It applies to wheat and meslin flour but not kept in unit container. In case of petitioner, wheat flour kept in 50 kg bag, which is in specific term excluded by the exemption notification.

Further the term “bearing a registered brand name” appearing in Notification No-1/2017- Central Tax (Rate) dated 28.06.2017, with respect to Serial No.-54 of Schedule I applicable in petitioner’s case was amended by Notification No. 27/2017 dated 22.09.2017 (corresponding notification published in Bihar Gazette being S.O.- 189 dated 21.09.2017). Clause (A) (i)(b) of the same clarifies that it includes a brand name on which an actionable claim or enforceable right in a court of law

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is available. But it carve out an exception to the extent that if the available actionable claim or enforceable right is voluntarily foregone by filing an affidavit with the Jurisdictional Commissioner of State Tax.

Clause (G) of Notification No.- 27/2017 dated 22.09.2017 (corresponding notification published in Bihar Gazette being S.O. 189 dated 21.09.2017) insert Clause (ii) (a) to the explanation; which says that the “brand name” means brand name or trade name, i.e., to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person. The amendment vide Notification No-27/2017 dated 22.09.2017, distinguishes Brand name and Registered Brand name.

The learned Jurisdictional Officer in the impugned order dated 28.08.2023, in specific terms has taken note of the fact that on unit container (i.e., 50 kg bag as per Annexure A to the counter affidavit), the brand name of petitioner as manufacturer is printed three times, therefore, in the opinion of

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this Court, the claim of petitioner in present writ application that it deals in “unbranded item” is misplaced and not sustainable. The contention of petitioner is that it has printed the name in compliance of Rule 6 of the Legal Metrology (packaged commodities) Rule, 2011 is fit to be rejected. The action of the petitioner further clears the smog and bring it nearer to the definition of brand name.

As per Clause A(b) of Notification No- 27/2017 dated 22.09.2017 (corresponding notification published in Bihar Gazette being S.O-189 dated 21.09.2017, which for the sake of brevity is reproduced here-in-below-

A(b)- bearing a brand name on which an actionable claim or enforceable right in a Court of law is available [other than those where any actionable claim or any enforceable right in respect of such brand name has been voluntarily foregone, subject to the conditions as in the ANNEXURE] shall be substituted;

Even if, petitioner’s reliance on the Judgment Dated 15.06.2026, passed by Co-ordinate bench of Madras High Court in the matter of **M/s Guru** *(supra)* and other analogous matter for its applicability in present case is accepted, then also it doesn’t support petitioner’s case. The Madras High Court in the

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matter of ***M/s Guru and Co. Vrs Union of India*** (Supra) has declared the Notification No-27/2017 dated 22.09.2017, as intravires minus the expression “enforceable right” in a Court of law. The judgment has persuasive value. In present case, the petitioner has not challenged the Notification No-27/2017 dated 22.09.2017.

The learned AO in impugned order dated 27.04.2024, has recorded its finding to the extend that Shree Durga Roller Flour Mills Pvt. Ltd. is a local brand name right from late 1980’s and they were known for the extra fine and white maida produced. Though, the Shree Durga Roller Flour Mills Pvt. Ltd. as a company has been sold from one entity to other but that does not end the brand, it simply means that the brand name was handed over to new hands. Further, after procuring company by the current owners (current taxpayer) they have not filed any affidavit with Jurisdictional Commissioner stating that they are voluntarily foregoing enforceable rights or any actionable claim on their brand name. The contention the petitioner is that it has printed the name of the product, its address in indelible ink both in English and Hindi language in Legal Metrology Act, 2009 read with Rule 6 of the Legal Metrology (packaged commodities) Rule, 2011 further strengthen the revenue case and

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in the opinion of this Court that the petitioner is selling its product in unit container (50 kg bag) in brand name of “Shree Durga Roller Flour Mills Pvt. Ltd.” (Annexure A to the counter affidavit filed by respondent department). The contention of the petitioner is that its product is ‘unbranded’ is fit to be rejected for the reason, that name of petitioner as manufacturer is mentioned 3 times on the unit container/bag which is covered by definition of “brand name” as per Clause (G)(ii)a of the amendment notification dated 22.09.2017.

28. As far as contention of petitioner raised by way of I.A. No- 01/2026, to the extent that issuance of notice dated 28.08.2023, is in contravention of provision of Section 65(7) of the BGST/CGST Act, 2017, is concerned, in the opinion of this Court, the petitioner has misunderstood the provisions of Section 65 and Section 73 of the BGST/CGST Act, 2017. The provision of Section 73 of the BGST/CGST Act, 2017 is a stand alone provision which can be invoked separately, when it appears to the proper officer that there is any escapement of tax, erroneous refund or wrongful claim of input tax credit. Whereas, the audit under Section 65 of BGST/CGST Act, 2017 is to be conducted by Commissioner or any officer authorized by him. If upon audit it is detected that- tax is not paid, short paid or erroneously

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refunded, or input-tax credit wrongly availed or utilized, the proper officer and not Commissioner or officer authorized by him may initiate a proceeding under Section 73 or Section 74. In present case, the audit authorities have recommended for proceeding under Section 47 i.e., for levy of late fee. The recommendation by audit may or may not bind the proper officer to initiate a proceeding under Section 73 or Section 74 of the BGST/CGST Act, 2017 as the case may be. In present case, the proper officer has initiated the proceeding under Section 73 of the SGST/CGST Act, 2017 after taking cue from the Audit Report.

29. Therefore, from the discussion made here-in-above, this Court is of the opinion that the petitioner is liable to make payment of Tax @ 5% on products name atta/maida/sooji. The main submission of the petitioner that it is not required to file an affidavit before the State Jurisdictional Commissioner for voluntary foregoing of any actionable claim has already been negated by furnishing of matching notification being Notification No-27/2017- State Tax (Rate) published in Bihar Gazette vide S.O-189 dated 21.09.2017 to be effective from 22.09.2017, in present proceeding by respondent department. As such, it is not entitled for any exemption under Notification

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dated 28.06.2017.

30. Accordingly, it is held that the petitioner is not entitled for any exemption from payment of Tax and from the detailed discussions made herein above, this Court finds no reason to interfere with the impugned order dated 27.04.2024, passed by respondent no. 3.

31. In the result, this writ application is dismissed.

(Vikash Kumar, J.)

Anil Kumar Sinha, J.: I agree.

(Anil Kumar Sinha, J.)

Amit/-

AFR/NAFR	AFR
CAV DATE	28.07.2026
Uploading Date	19.11.2026
Transmission Date	N/A

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