

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.862 of 2026

Manju Devi Agarwal wife of Bhupesh Kumar Agarwal, resident of Ward No. 06, Hospital Road, Forbesganj, Araria, Bihar- 854318 proprietor M/s Sampark, having its office at Ward No. 06, Hospital Road, Forbesganj, Araria, Bihar- 854318 through its Authorized Signatory Nimesh Kumar Jha, (Male, aged about 32 Years) son of Shri Dharam Nath Jha, resident of Bhadreswar, Araria, Bhadreswar, Bihar-854316.

... .. Petitioner/s

Versus

1. Central Board of Indirect Taxes and Customs GST Policy Wing, Government of India, Department of Revenue having its office North, New Delhi-110001.
2. Commissioner of CGST and Central Excise having its office at Bir Chand Patel Path Patna -800001.
3. Asst. Commissioner of CGST and Central Excise, Purnea Division, Darbhanga.
4. Asst. Commissioner of CGST and Central Excise, Audit Circle, Darbhanga.
5. Manager, State Bank of India, Forbesganj Branch, Forbesganj, District - Araria, Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sadashiv Tiwari, Advocate Mr. Himesh Kiran, Advocate
For the Resp. Nos. 1 to 4:		Mr. Amit Pandey, Sr.S.C., CGST and CX Mrs. Asmita Sinha, Advocate
For the Resp. No. 5 (SBI):		Mr. Kaushalesh Choudhary, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

3 27-04-2026 Heard learned counsel for the petitioner, learned counsel for the CGST and learned counsel for the State Bank of India.

2. The petitioner in the present writ application is seeking the following reliefs:-



“(i) The notice dated 25.07.2024 and 31.07.2024 (as contained in Annexure - P 3 series) issued by the respondent no. 3 and 4 under section 74 of the Central Goods and Services Tax Act, 2017 (hereinafter called the Act) in absence of any fraud or any willful misstatement or suppression of facts to evade tax particularly, in view of payment of tax voluntarily for multiple assessment years before the issue of the show cause notice be set aside and quashed.

(ii) The order dated 04.02.2025 and 06.02.2025 (as contained in Annexure-P 4 series) and notice dated 24.10.2025 (as contained in Annexure-P 5) passed by the respondent no. 3 for the Tax Period 2017-18 to 2022-23 under section 74 of the Central Goods and Services Tax Act, 2017 (hereinafter called the Act) for multiple assessment years and also in view of payment of tax prior to issue of a show cause notice in Form GST DRC 1 voluntarily and more importantly, in view of levy of interest and penalty in excess of the show cause notice in Form GST DRC 1 being in contradiction of the statutory provisions contained in section 75 (7) of the Act be set aside and quashed.

(iii) The Circular F. No. CBIC 20010/67/2025- GST/994 dated 16.09.2025 issued by the respondent no. 1 issuing standard public comments explaining statutory provisions contained in section 73 and 74 of the Act in supersession of the law laid down by other Hon'ble High Courts in the Country and holding such judicial pronouncements to be applicable only within the jurisdiction of the said Hon'ble High Court including non-applicability of certain judicial pronouncements purportedly issued in exercise of powers under section 168 of the Act being excess of powers conferred and being opposed to the scheme of GST being "One Nation One Tax" theory is arbitrary, illegal and without



jurisdiction?

(iv) The notice dated 24.10.2025 issued by the respondent no. 3 in Form GST DRC - 13 under section 74 (9) of the Act directing the respondent no. 5 to remit the amount of tax determined in pursuance of an order of assessment particularly, in view of payment of tax prior to the issue of show cause notice fully illegal and without jurisdiction?

(v) For granting any other relief (s) to which the petitioner is otherwise found entitled to.”

Brief facts of the case

3. The petitioner is engaged in the business of fertilizer, cement and pesticides. It is an admitted position that the petitioner filed the statutory returns in Form GSTR 1 and GSTR 3B for the tax period 2017-18 to 2022-23.

4. It appears from the show cause notice (in short ‘SCN’) dated 25.07.2024 (Annexure ‘P/3’) that the petitioner was served with the SCN calling upon her to show cause for the alleged contravention of the provisions of Sections 9, 16, 50 and 74 of the CGST Act, 2017. The SCN alleged short payment of tax and the excess availment of the input tax credit for which the petitioner was liable to pay the amount of tax along with the interest as applicable under Section 50 (1) and Section 74 of the Central Goods and Services Tax Act, 2017/BGST Act, 2017 (hereinafter referred to as ‘CGST Act, 2017’).

5. From the narration of facts present in the SCN, it



would appear that in course of audit and scrutiny of GSTR-1 and GSTR-3B, the short payment of taxes to the extent of Rs. 10,59,756/- [CGST- 5,29,878/- + SGST- 5,29,878/-] was noticed and the differences which were being reflected in the Annual Return i.e. GSTR-9, have been shown in the SCN. It appears that the tax payer/ petitioner was requested to pay the said short paid GST along with applicable interest under Section 50 of the CGST Act, 2017.

6. The records would further reveal that the tax payer paid a sum of Rs. 5,79,756/- vide DRC-03, Debit entry dated 19.06.2024. The tax payer was then requested to discharge remaining tax amounting to Rs. 4,80,000/- vide various office letters. In response to the same, the tax payer discharged the remaining payment amounting to Rs. 4,80,000/- but the liability towards the interest under Section 50 of the CGST Act, 2017 was not discharged.

7. It is further noticed that the petitioner had availed excess input tax credit amounting to Rs. 29,35,892/- [IGST- 12,188/- + CGST- 17,88,273/- + SGST- 11,35,431/-] during the period 2017-18 to 2022-23. This was detected during the scrutiny of the ITC available as per GSTR-2A and ITC availed as per GSTR-3B. This was found in violation of Section 16 of



the CGST Act, 2017 read with Rules 36 of the CGST Rules, 2017. In response to the said wrong availment of input tax credit, the petitioner was requested reverse excess availed ITC. In response to the same, the petitioner paid tax amounting to Rs. 29,35,892/- which have been shown in the show cause notice. It is mentioned that the tax payer/petitioner did not discharge applicable interest under Section 50 and penalty under Section 74 of the CGST Act, 2017 on the said tax paid. The show cause notice therefore, claimed that the tax-payer is liable to pay applicable interest under Section 50 along with penalty as applicable under Section 74 of the Act on payment of the above tax.

8. The third head under which the show cause notice has been issued relates to non-payment of GST amounting to Rs. 3,43,864/- with recoverable interest of Rs. 3,17,683/- and applicable penalty. It is stated that during scrutiny of Form 26AS of Financial Year 2017-18 to 2022-23 and the turnover declared in Profit and Loss Account, it appears that the tax payer had not discharged the GST liabilities against payment received under different sections, such as 194(b), 194R etc. The tax-payer was called upon to pay GST amounting to Rs. 3,43,864/- with applicable interest and penalty and the same was communicated



to the tax-payer through Audit Memo: 01/MDA/2024-25 dated 07.06.2024. In response to the same, the tax-payer paid the tax amounting to Rs. 3,43,864/-. The interest on the said tax amount has been calculated year wise in the show cause notice. Since the tax-payer had not discharged the said interest liability as calculated under Section 50 and penalty under Section 74 of the CGST Act, 2017, the show cause notice called upon the petitioner to pay interest and the penalty. In paragraph nos. 5 and 6 of the show cause notice, the following stipulations are present which are quoted hereinunder for a ready reference:-

“5. All the above acts of contravention appeared to have been committed by way of suppression/wilful-misstatement of the facts with an intention in evade payment of GST and therefore, the GST not paid is required to be demanded and recovered from them under the proviso to Section 74(1) of the Acts by invoking extended period

"Section 74: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful-misstatement or suppression of facts.-

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilized input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice."

6. The said taxpayer was communicated the decision of the MCM



conducted on 20.06.2024 (Form GST ADT-02) vide this office letter C.No. GADT CnGADT/GST/6266/2024-GR19-CGST-ADT CIR-6-ADT-PATNA/621 dated 27.06.2024 (RUD-4 and further through DRC-01A: 09/Audit(DBG)/Gr.19/2024-25 vide this office letter GADT/ Cn ADT/GST/6266/2024-GR19-CGST-ADTCIR-6-ADT PAINA /641 dated 04.07.2024 (RUD-5) requesting to pay Tax amounting to Rs.34,29,719/- CGST- Rs.20,35,187/-, SGST- Rs.13,82,344/- & IGST-Rs.12,188/- alongwith confirmed interest amounting to Rs.4,56,626/- CGST- Rs.2,14,841/- & SGST- Rs. 2,07,332/- +IGST-Rs. 34,053/-] and Late Fees- 7,94,350/- [CGST- Rs.3,97,175/- and SGST- 3,97,175/-] in addition to applicable interest under Section 50 and penalty at applicable under Section 74 of the CGST Act, 2017 during the period 2017-18 (Jul-Mar) to 2022-23.

In response to above letters, the taxpayer discharged Tax amounting to Rs. 34,29,719/- [CGST-Rs. 20,35,187/-, SGST-Rs. 13,82,344/-& IGST-Rs. 12,188/-] vide DRC-03s:-

- Debit entry no. D1107240004716 dated 07.07.2024(RUD-6)
- Debit entry no. 11100-240004720 dated 07.07.2024(RUD 8)
- Debit entry no. D11007240004723 dated 07.07.2024 (RUD-9)
- Debit entry no. D11007240004726 dated 07.07.2024-(RUD-10)
- Debit entry no. D11007240004729 dated 07.07.2024 (RUD-11)
- Debit entry no D11007240004732 dated 07.07.2024 (RUD-12)
- Debit entry no. DC 1007240011431 dated 07.07.2024 (RUD-13)
- Debit entry no. DC 1007240011422 dated 07.07.2024(RUD-18)
- Debit entry no. DC1007240011428 dated 07.07.2024(RUD-19)
- Debit entry no. DC1007240011416 dated 07.07.2024(RUD-20)

Confirmed interest amounting to Rs.1,38,942/-[CGST-Rs.55,999/-,SGST-Rs.48,890/- & IGST-34,053/-] and Rs.17,110/- [CGST-Rs.8,555/- & SGST-Rs.8,555/-] out of applicable interest and Rs.2,076/- [CGST-1,038/- & SGST-1,038/-] out of applicable penalty concerned to Para No. 03 and Para no.10 of Audit Memo: 01/MDA/24-25 dated 07.06.2024 (RUD-1) and vide DRC-03s

- Debit entry no. DC 1007240011389 dated 07.07.2024 (RUD-21)
- Debit entry no. DC 1007240011394 dated 07.07.2024(RUD-22)



- Debit entry no. DC1007240011401 dated 07.07.2024(RUD-23)
- Debit entry no. DC 1007240011408 dated 07.07.2024 (RUD-24)
- Debit entry no. DC 1007240013463 dated 08.07.2024 (RUD-25)
- Debit entry no. DC 1007240013475 dated 08.07.2024(RUD-26)
- Debit entry no. DC 100-240011416 dated 07.07.2024(RUD-20)
and Late Fee amounting to Rs.7,94,350/- [CGST-Rs.3,97,175/- and
SGST-3,97,175/-] vide DRC-03s
- Debit entry no. DC 1007240011339 dated 07.07.2024(RUD-27)
- Debit entry no. DC 1007240011348 dated 07.07.2024(RUD-28)
- Debit entry no. DC 1007240011351 dated 07.07.2024(RUD-29)
- Debit entry no. DC 1007240011361 dated 07.07.2024(RUD-30)
- Debit entry no. DC 1007240011365 dated 07.07.2024(RUD-31)
- Debit entry no. DC 1007240011372 dated 07.07.2024(RUD-32)
- Debit entry no. DC 1007240011378 dated 07.07.2024(RUD-33)
- Debit entry no. DC 1007240011382 dated 07.07.2024(RUD-34)
and communicated to this office requesting to waive all the interest
and penalty in light of 53rd GST council meeting vide their e-mail
dated 08.07 2024 (RUUD-7).

However, as on date, there is no such circular or notification regarding such waiver.

Thus, the taxpayer is liable to discharge the confirmed interest amounting to Rs.3,17,684/- [CGST-1,58,842/- & SGST-Rs.1,58,842/-] (concerned to the tax amount mentioned in para no.3.3 above) along with applicable interest (concerned to the tax amount mentioned in para no.3.1 and 3.2 above) under section 50 and Penalty under section 74 of the Acts.”

9. It is evident from paragraph ‘5’ of the show cause notice that the department has made specific allegation against the petitioner that there is a suppression/wilful-misstatement of the facts with an intention to evade payment of GST. The taxpayer was communicated about the decision of the MCM conducted on 20.06.2024 vide letter referred under paragraph



‘6’ of the show cause notice.

10. There is no dispute over the fact that the show cause notice had been duly served upon the petitioner but the petitioner chose not to file any response to the said show cause notice.

11. On perusal of the summary of the order in Form GST DRC-07, it would appear that the petitioner was given an opportunity of hearing as well. Paragraph ‘3’ of the order records this fact that the matter was fixed for personal hearing on 17.10.2024. Sri Anand Agrawal appeared on behalf of the noticee and said that the noticee had paid tax and partial interest and partial penalty through DRC-03 and the rest amount of interest and penalty will be deposited within two months.

12. It is evident from the order (Annexure ‘P/4’) that the representative of the petitioner admitted not only the tax liability but also the liability towards interest and penalty. In fact, the representative made a statement that rest of the amount of interest and penalty will be deposited within two months.

13. Based on what were submitted before the competent authority, the order impugned in the present writ application (Annexure ‘P/4’) has been passed.

14. The petitioner did not challenge the order



(Annexure 'P 4') in appeal before the Appellate Authority. After 10 months of the order (Annexure 'P/4'), the present writ application has been preferred.

Submission of the petitioner

15. Learned counsel for the petitioner has submitted that in this case, the SCN (Annexure 'P/3') has been issued after payment of the tax amount by the petitioner. It is his submission that once the tax amount has been paid by the petitioner, no SCN could have been issued under Section 74 of the CGST Act. According to him, the SCN could have been issued only under Section 73 of the CGST Act. Learned counsel submits that the SCN did not mention any penalty amount to be levied against the petitioner. Therefore, levy of penalty in the final order (Annexure 'P/4') would not be sustainable.

16. Learned counsel for the petitioner submits that these are sufficient grounds for setting aside of the impugned order (Annexure 'P/4') and remand the matter to the Assistant Commissioner (Respondent No. 4) who has passed the impugned order.

Submission of the respondents

17. On the other hand, learned counsel for the respondent nos. 1 to 4 submits that the impugned order does not



suffer from violation of principles of natural justice. The petitioner has been given adequate opportunity to place the case before the Assistant Commissioner (respondent no. 4). There is an admission of liability by the representative of the petitioner in course of hearing. Thus, the petitioner is estopped from taking any plea against the imposition of interest and penalty in terms of the statutory provisions.

18. Learned counsel further submits that the petitioner, if at all, was aggrieved by the impugned order, had a remedy available by filing an appeal before the Appellate Authority under Section 107 of the CGST/BGST Act, 2017. The petitioner chose not to file any appeal within the prescribed period of the limitation. This writ application has been preferred 10 months after the impugned order when the remedy of appeal became barred by limitation. The submission is that this Court sitting under 226 of the Constitution of India would not step into the domain of the competent authority, such as the respondent no. 4 to consider the matters having certain issues of facts which are in complete conflict with the stand taken before the respondent no. 4. The submission is that where the petitioner/her representative has admitted the liability before the respondent no. 4, any interference by this Court even by way of remand



would not be justified. Such interference in the revenue matters is required to be discouraged.

Consideration

19. Having regard to the submissions noted herein-above and the materials which are placed before this Court, we find force in the submissions of the learned counsel for the respondent nos. 1 to 4. The SCN dated 25.07.2024 (Annexure 'P/3') clearly alleged willful suppression on the part of the tax-payer/petitioner. The provisions of Section 74 under which the SCN has been issued, had been brought to the notice of the tax-payer. A response was sought for but the tax-payer did not file any response, rather went on depositing the money with the department. It is clearly recorded in paragraph '3' of the impugned order that the representative of the petitioner submitted that the partial payment on account of interest and penalty has been made. This statement recorded in the impugned order has not been challenged by the petitioner.

20. We, therefore, agree with the submission of learned counsel for the respondent nos. 1 to 4 that having taken one stand before the competent authority, the petitioner would be estopped from changing her stand before this Court by filing a writ application. Such submissions, on behalf of the petitioner



are being made only to get rid of the impugned order and those are required to be discouraged by this Court. We find no force in the submissions of the learned counsel for the petitioner because the petitioner had paid the tax amount without protest. The payment of taxes on account of short payment of taxes or wrongful availment of input tax credit after it was pointed out in the audit, the submission that the SCN could not have been issued under Section 74 of the CGST Act, 2017 has no basis to stand. As recorded above, the petitioner was served with the SCN clearly saying that it was a case of willful suppression, which the petitioner did not contest before the competent authority.

21. In such circumstance, we find no merit in this application. It is dismissed, accordingly.

(Rajeev Ranjan Prasad, J)

(Soni Shrivastava, J)

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