

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10743 of 2024

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S.S. Enterprises a partnership firm having its office at NH 31, Jail Chowk, Purnea- 854301, Bihar- 852123 through its partner Sahir Khan (Male, aged about 28 years) son of Irshad Ahmad Khan, resident of 107, Road No. 4, Near Park, Sampatchak, Rajendra Nagar, Patna, Bihar- 800016.

... .. Petitioner/s

Versus

1. Union of India through the Secretary, Finance, North Block, New Delhi- 110001.
2. Central Board of Indirect Taxes and Customs through its Secretary having its office at 47 B, CBIC, Department of Revenue, North Block, New Delhi- 110001.
3. Commissioner of CGST and Central Excise having its office at Central Revenue Building (Annexe), Bir Chand Patel Path, Patna.
4. Superintendent, Central GST and Central Excise Range- Purnea, Division- Purnea.

... .. Respondent/s

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Constitution of India---Article 226---Goods and Service Tax Act, 2017---section 73(9), 73(10), 75(4), 169, 107--- CGST Rules, 2017---Rule 142(1)(a)---writ petition to quash and set aside impugned order passed by Superintendent, Central GST and Central Excise Range- Purnea charging tax, interest and imposing penalty on Petitioner for the Financial Year 2018-19---argument on behalf of Petitioner that notice was not uploaded in electronic mode on the portal and that he has not been provided an opportunity to be heard---Findings: non-uploading of notice in portal would not vitiate impugned order---petitioner was provided personal hearing before the concerned authority as is evident from portion of the para 7 of the impugned order---petitioner has statutory remedy of appeal under Section 107 of CGST Act, 2017 before the Appellate Authority and therefore he has been relegated to the Appellate Authority---writ disposed. **(Para-2-4)**

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... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.D.V.Pathy, Sr. Advocate
Mr.Sadashiv Tiwari, Advocate
Ms.Prachi Pallavi, Advocate
Mr.Hiresh Karan, Advocate
Ms.Shivani Dewala, Advocate
For the Respondent/s : Mr.Krishna Nandan Singh, ASGI
Mr.Anshuman Singh, Sr. SC, CGST & CX
Mr.Shivaditya Dhari Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 28-01-2025

In the instant writ petition, petitioner has sought for
the following relief(s):-

“(i) the order dated 19.04.2024 and
also the summary of order (as contained in
Annexure- P3 series) passed by the respondent
no. 4 under Section 73(9) of the Act charging



tax, interest and imposing penalty for the Financial Year 2018-19 beyond the time limit set out in Section 73(10) of the Act be set-aside and quashed.

(ii) the order dated 19.04.2024 and also the summary of order (as contained in Annexure-P3 series) passed by the respondent no. 4 under Section 73(9) of the Act charging tax, interest and imposing penalty for the Financial Year 2018-19 in view of payment of the admitted tax as per returns in Form GSTR 3B duly reflected therein month-wise be set-aside and quashed.

(iii) the order dated 19.04.2024 and also the summary of order (as contained in Annexure -P3 series) passed by the respondent no. 4 under Section 73(9) of the Act charging tax interest and imposing penalty for the Financial Year 2018-19 in derogation of the circular issued by the Central Board of Indirect Taxes and Customs directing service of summary of notice and summary of orders electronically on the portal by the proper officer render the order invalid?

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

2. The petitioner in para 28 stated that he has no efficacious alternative remedy than to move this Hon'ble Court for the relief sought. In support of the same, he is relying on Annexure-P/2 Instruction No. 04/2023-GST, para 3 to the extent that notice was not uploaded in electronic mode on the portal in FORM GST DRC-07 under Rule 142(1) (a) of CGST Rules, 2017. He is also relying on Section 75(4) of GST Act, 2017 to the extent that petitioner has not been provided an opportunity. On the other hand, in the impugned order dated 19.04.2024, portion of the para 7 it is stated as under:-



“PERSONAL HEARING

An opportunity of personal hearing against the instant Demand cum Show Cause Notice (DRC-01) was granted to the notice on 07.02.2024, 12.02.2024 and 16.02.2024. However, no one appeared for personal hearing.”

3. The aforementioned material is not disputed by the petitioner. Merely, non-uploading of notice in portal would not vitiate impugned order. In view of the fact that petitioner was provided personal hearing before the concerned authority as is evident from portion of the para 7 of the impugned order cited (supra). Therefore, we have to draw inference that petitioner has waived his right under Instruction No. 04/2023-GST dated 23.11.2023 (Para 3) read with Section 75(4) of GST Act, 2017 by implication, waived the requirement of uploading of notice electronically on the portal. At this distant of time, it is not appropriate to examine portion of Annexure-P/2 read with Section 75(4) of GST Act, 2017. That apart Section 169 of CGST Act, 2017 reads as under:-

“169. Service of notice in certain circumstances.—

(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:

—
(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person



regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or

(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.”

Therefore notice/order passed under Section 73 of CGST Act, 2017. By making the notice or order available on common portal is another statutorily permissible mode of service.



4. In the light of above discussion petitioner has statutory remedy of appeal under Section 107 of CGST Act, 2017 before the Appellate Authority and therefore he has been relegated to the Appellate Authority. If such appeal is filed within six weeks, in that event, Appellate Authority shall examine petitioner's appeal while excluding the delay period from the date of filing the present petition till today. Similar view has been taken by the Co-ordinate Bench of this Court in CWJC No. 4541 of 2024 in the case of *M/s Mangal Murti Constructions vs. Union of India*, wherein Hon'ble Supreme Court decision in the case of **M/s Godrej Sara Lee Ltd. vs. Excise and Taxation Officer-cum-Assessing Authority and Ors.** reported in **2023 SCC OnLine SC 95** has been taken note of in para 2 insofar as in not exhausting alternative remedy. That apart in the case of **M/s Vishwanath Traders vs. Union of India & Ors.** in CWJC No. 82 of 2023. Hon'ble Supreme Court upheld the decision of this Court on the issue of that assesses cannot invoke extra-ordinary jurisdiction under Article 226 of Constitution of India. There are exceptions to the rule of alternative remedy arise, like (i) writ petition is filed for the enforcement of a fundamental right protected by Part III of the Constitution; (ii) There has been a violation of the principle of natural justice; (iii) the order or proceedings are wholly without authority of law or without jurisdiction; or the vires of a legislation is challenged. Petitioner contended that impugned actions are in



violation of principle of natural justice. In para 2 of this judgment it is crystal clear that petitioner failed to avail opportunity of hearing despite three notices of personal hearing. Therefore, there is no violation of principle of natural justice on the face of record.

5. Accordingly, the present CWJC No. 10743 of 2023 stands disposed of.

6. At this stage, learned counsel for the petitioner on instruction submitted that there would be a hurdle in filing appeal in the absence of the uploading impugned order in a portal. In this regard, officials-respondents are hereby directed to take note of and to resolve the problem insofar as uploading in portal or accepting pre-deposit insofar as filing of appeal in a manual mode.

(P. B. Bajanthri, J)

(Sunil Dutta Mishra, J)

abhishekk/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	11.02.2025
Transmission Date	NA

