

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16509 of 2024

Om Traders a partnership firm having its office at H. No.- 956A, Om Traders, Ramchandrapur, Biharsharif, Nalanda- 803216 Bihar through its Authorized Signatory Pankaj Kishore (Male, aged about 48 Years) Son of Shri Indra Deo Prasad, resident of near Kali Asthan Tilhapar, Bhaisasur, Biharsharif, District-Nalanda, Bihar- 803101.

... .. Petitioner/s

Versus

1. Union of India through the Secretary, Finance, North Block, New Delhi- 110001.
2. Central Board of Indirect Taxes and Customs, Ministry of Finance, Government of India through its secretary having its office at North Block, New Delhi- 110001.
3. Central Board of Indirect Taxes and Customs, Grievance Ministry of Finance, Government of India through its secretary having its office at North Block, New Delhi- 110013.
4. Commissioner of CGST and Central Excise, having its office at Bir Chand Patel Path Patna- 800001.
5. State of Bihar, through the Commissioner of State Tax, Bihar, Patna having its office at Vikas Bhawan, Patna- 800001.
6. Joint Commissioner of State Tax, Biharsharif, Patna East, Bihar.
7. Goods and Services Tax, Network Having its office at word mark 1, Aerocity, Indira Gandhi International Airport, New Delhi 110037.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. D.V.Pathy, Advocate Mr. Sadashiv Tiwari, Advocate Mr. Hiresh Karan, Advocate Mrs. Shivani Dewalla, Advocate Mrs. Prachi Pallavi, Advocate
For the Respondent/s	:	Mr. Anshuman Singh, SR. SC, CGST Mr. Vikas Kumar, SC-11

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 13-05-2025

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



i) the order dated 06.05.2020 (as contained in Annexure – P 6) passed by the respondent no. 2 for the Tax period 2019-20 only on the ground that the grievance was already addressed by the proper authority under the State Act and that there is no provision of adjustment of erroneous payment of tax under one head i.e. IGST with the liability of other head i.e. CGST and SGST and advising payment of erroneously payment of tax again and claim refund without reference to the respondent no. 1 to whom the application was addressed being contrary to the settled principles of natural justice and also Article 265 of the Constitution of India be set aside and quashed.

ii) the order dated 23.08.2024 and also the summary of order in Form GST DRC – 07 (as contained in Annexure – P 9 series) passed by the respondent no. 6 raising demand of tax, interest and penalty amounting to Rs. 2,49,45,852/- for the month of April 2019 occurring only on account of an inadvertent clerical error in clicking the “submit” button while uploading the said return and the subsequent correction in GSTR 3B for the month of May 2019 without taking notice of the statement/return of outward supply in Form GSTR 1 for the month of April 2019; the auto populated statement of purchase in Form GSTR 2A reflecting purchase of goods and availability of ITC by way of IGST and also the provisions of Rule 88A of the CGST Rules (hereinafter called the Rules) permitting order of adjustment of IGST with CGST and SGST and the manner elaborated in Circular No. 98/17/2019/GST dated 23.04.2019 issued by the Central Board of Indirect Taxes in absence of a tax liability under IGST being contrary to Article 265 of the Constitution of India and is arbitrary be set aside and quashed.



iii) the charge of interest on disputed tax arising only on account of an inadvertent clerical error in filling up the return in Form GSTR 3B particularly, in view of availability of ITC in the electronic credit ledger by way of IGST adjustable with the tax liability under the CGST and SGST under Rule 88 A of the Rule being illegal and arbitrary be set aside and quashed.

2. Brief facts of the case are that petitioner is a two wheeler dealer having a business in the State of Bihar. He was purchasing two wheelers from the manufacturer and the manufacturer are outside the State of Bihar. Therefore, there would be a IGST transaction. For the month of April 2019, GSTR 1 was filed on 10.05.2019 and GSTR 3B was filed on 20.06.2019. In filing GSTR 1, there is no error committed by the petitioner. While filing GSTR 3B, the petitioner inadvertently committed error under the column of total taxable value is indicated Rs. 8,23,83,871.09/- in GSTR 1 total taxable value has been shown as 8,46,81,924.41/-. Similarly, IGST has been shown as Rs. 2,24,72,258.31/- whereas Rs. 34,347.02/- has been shown under GSTR 1. To the above effect, petitioner noticed that he had committed error while submitting GSTR 3B and it is not tallying with the GSTR 1 insofar as total taxable value and total integrated tax. Similarly, total CGST and total SGST. In this regard,



petitioner had submitted application to rectify GSTR 3B on par with the figure mentioned in GSTR 1 on 17.05.2019, the same was rejected on 06.05.2020. Resultantly, show cause notice was issued for assessment GST DRC-01 on 31.05.2024. Petitioner had submitted return submission on 16.06.2024. In this backdrop, impugned order has been passed by the concerned authority on 23.08.2024 while demanding certain amount of tax under the heading of SGST and CGST for the month of April 2019. On 06.05.2020, Assistant Commissioner of CGST and CX Ranchi Zone, Patna, office of the Chief Commissioner of GST and Central Excise (Ranchi Zone) passed the following remarks:-

Details for registration number : CBOEC/E/2020/01342	
Name of complainant	INDRA DEO PRASAD
Date of Receipt	17/03/2020
Received By Ministry/Department	Central Board of Excise and Customs
Grievance Description	
<p>To,</p> <p>Central Board of Indirect Taxes & Customs, Department of Revenue, Ministry of Finance, Govt. of India.</p> <p>Sub: Request for adjustment of excess payment of IGST towards CGST and SGST.</p> <p>Dear Sir/Madam,</p> <p>We are carrying on business under trade name “Om Traders” at Bihar Sharif in Bihar and registered under Bihar Sharif Circle bearing GST No. 10AAAF07986P1ZP.</p> <p>Due to mistake in filing of GSTR-3B for the month of April 2019, excess amount of GST tax has been paid in IGST instead of CGST and SGST. I had intimated this error to the concerned authority and requested for adjustment of excess paid GST tax in wrong head to the correct heads. But after several reminders since May 2019, my issue has not been resolved yet.</p> <p>I would like to draw your kind attention in a similar case, the Hon’ble High Court of Kerela in its</p>	



judgment dated 12/11/2018 under WP(C) No. 35868 of 2018 has mandated the tax authority to transfer the tax in correct head when GST is paid in wrong head inadvertently by the petitioner. So, I request the department to kindly transfer excess payment of GST in wrong head to correct heads. Attached letter contains full details with supporting documents for your kind reference. Thanks & Regards,

Indra Deo Prasad
Partner
M/s Om Traders,
Ramchandrapur,
Bihar Sharif,
Nalanda,
Bihar 803101

Current Status	Case closed
Date of Action	06.05.2020
Remarks	
<p>The matter raised in the instant Grievance under Grievance under CPGRAMS Reg. No. CBOEC/E/2020/01342 dated 17.03.2020 was examined by the jurisdictional Authority (CGST and CX, Patna East Division) who informed after examination that GSTIN – 10AAAFO7986P1ZP of M/s Om Traders, Ramchandrapur, Bihar Sharif was verified from the taxpayers list on GST Application Portal and it was found that the said taxpayer was supervised by the State Authority i.e. Bihar Sharif Circle and thus their grievance was already addressed to the proper authority. Further he added that as per existing law of GST, there was no provision of adjustment of erroneous payment of tax amount under one head i.e. IGST to liability of other Head i.e. CGST/SGST. As there exists liability of CGST amounting to Rs. 1,12,18,955.27 and SGST amounting to Rs. 1,12,18,955.27 against the said taxpayer, they are required to pay liability first and then apply for the refund of erroneous payment made under IGST through ITC amounting to Rs. 2,24,37,911.54 to the concerned State Authority/proper authority. So far as the judgment of Hon'ble Kerela High Court dated 12.11.2018 in WP © No. 3586 of 2018 quoted by the taxpayer is concerned, it is not squarely applicable in the case as it relates to a particular case for specific reason.</p> <p>Under the above circumstances, the grievance CPGRAMS Reg. No. CBOEC/E/2020/01342 dated 17.03.2020 is disposed off from this office.</p>	
Officer concerns to	
Officer Name	Sujit Kumar Sadhu (Assistant Commissioner of CGST and CX Ranchi Zone Patna)
Organisation Name	Chief Commissioner of GST and Central Excise (Ranchi Zone)
Contact Address	Central Revenue Building Annexe, Birchand Patel Path, Patna,
Email Address	ccu-cexranchi@nic.in
Contact Number	06122504035

The same was not complied by the petitioner, in this backdrop, the petitioner filed present CWJC contending that it is



only a rectification of GSTR 3B on par with the GSTR 1 filed on 20.06.2019 and 10.05.2019 respectively.

3. In support of the aforementioned contention, learned counsel for the petitioner relied on decision of the Bombay High Court dated 29.07.2024 passed in **writ petition no. 7912 of 2024** in the case of **Aberdare Technologies Pvt Ltd & Anr vs. Central Board of Indirect Taxes & Customs and ors.** Central Board of Direct Taxes and customs preferred **Special Leave Petition (civil) diary no. 6332 of 2025** and it was dismissed on 23.01.2025, while upholding the judgment dated 29.07.2024 passed in writ petition no. 7912 of 2024 in the High Court of Judicature at Bombay Civil Appellate Jurisdiction. The petitioner is entitled to same relief.

4. Per contra learned counsel for the respondent resisted the aforementioned contentions and submitted that petitioner has failed to take the advise of the Assistant Commissioner of CGST and CX Ranchi Zone, dated 06.05.2020 which is narrated supra. Insofar as making payment of CGST and SGST and to claim IGST before the concerned authority. Further, he relied on Section 49(5) of the CGST Act and apprise this Court to dismiss the present writ petition.

5. Heard learned counsel for the respective parties. Disputed issue in the present *lis* is whether petitioner is permitted to rectify GSTR 3B on par with the GSTR 1 filed on 20.06.2019 and



10.05.2019 or not? In the government, there is no system of rectification of any return once it is filed. However, petitioner had submitted application to rectify GST 3B on par with the GSTR 1 relating to certain total taxable value, total integrated tax, total CGST, total SGST. He had committed error insofar as mentioning total taxable value while submitting GSTR 3B and it is not in accordance with the GSTR 1. In the absence of any system to modify or to carry out necessary correction in GSTR 3B the concerned authority has proceeded to advise the petitioner to pay CGST and GST thereafter claim refund and it is not supported by any statutory provision. Further, we have noticed and repeatedly ask the State counsel as to whether rectification of GSTR 3B on par with the GSTR 1 has any repercussion insofar as loss to the State exchequer or not? On this point, he could not apprise this Court.

6. Be that as it may in identical situation, Bombay High Court had an occasion to decide the matter insofar as rectification of GSTR 1 and GSTR 3B in the case of **Aberdare Technologies Pvt Ltd & Anr vs. Central Board of Indirect Taxes & Customs and ors** cited *supra* and it has been confirmed by the Supreme Court.

7. Bombay High Court relied on **Engineers (I) Pvt Ltd. Vs. Union of India & ors.** (para 7 to 23) it has taken note of para 12 to 18 and directed as under para 4 reads as under:-



“In the circumstances, we direct respondents to open the portal within one week from the date of this order being uploaded and inform petitioner to enable them to amend/rectify Form GSTR-1 and GSTR-3B within one week. If the portal is not opened for whatever reasons, petitioner shall file application to amend/rectify Form GSTR-1 and GSTR-3B manually and respondent nos. 2 and 3 are directed to accept and process the same in accordance with law. If these respondents are going to take a stand contrary to petitioner’s interest, they shall give notice to petitioner atleast five working days in advance and give personal hearing.”

8. The same was affirmed by the Hon’ble Supreme Court. In the present case also it is error committed by the petitioner insofar as filling up of certain figures in the GSTR 3B return and it is not tallying with the GSTR 1 to that extent petitioner’s request is for rectification of the same. Thus, petitioner has made out a case so as to interfere with the impugned order dated 06.05.2020 and it is set aside. The concerned authorities are hereby directed to rectify form GSTR 3B on par with contents of GSTR-1 within a period of one month from the date of receipt of this order. In this regard, petitioner is hereby directed to submit a manual application. The concerned authority is hereby directed to



redress the consequent grievance if any, of the petitioner within a period of two months from today.

9. With the above observation the present writ petition stands allowed.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

Ankit Kumar/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.05.2025.
Transmission Date	NA

