

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5240 of 2024

M/s PepsiCo India Holdings Private Limited Shree Mahavira Logistics Park,
P.S. - Gopalpur, Vill- Bariya, Sampatchak Patna, Bihar - 800007 through its
Senior Legal Manager, Ankit Singh (Male) aged about 37 years, S/o Rajendra
Singh, R/o 302, C- 58/10, Mecon Apartment, Sector - 62, Gautam Buddha
Nagar, P.S. - Sector - 58, Noida, Uttar Pradesh - 201301.

... .. Petitioner/s

Versus

1. Union of India (Through its Secretary, Ministry of Finance, Department of Revenue, No. 137 North Block, New Delhi- 110001.
2. Joint Commissioner, Central GST and Central Excise, Patna - I.
3. Superintendent, Central GST and CX., Range, Phulwarisharif, 6th Floor, B-Block, Karpoori Thakur Sadan, Ashiyana- Digha Road Patna - 25.
4. Principal Commissioner, Central GST and CX, Patna - I, 3rd Floor, C.R. (Annex.) Building Birchand Patel Path, Patna- 800001.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rohan Shah, Advocate Mr. Ravi Bharuka, Advocate Mr. Joybrata Misra, Advocate Mr. Sanjeev Kumar, Advocate Mr. Manish Mishra, Advocate Mr. Shareen Gupta, Advocate Mr. Tanay Vyas, Advocate
For the Respondent/s	:	Dr. K.N. Singh, ASG Mr. Anshuman Singh, Sr. SC. CGST & CX Mr. Devansh Shankar Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-07-2024

The petitioner is before this Court challenging a demand cum show-cause notice issued under Section 74(1) of the Central/Bihar Goods and Services Tax Act, 2017. We were of the opinion that the petitioner could take all contentions before the authority, and there could be no challenge entertained



against a show-cause notice issued. The learned Counsel for the petitioner, however, insisted that there is an illegality in the issuance of the notice, specifically of non-compliance of the provisions of the Goods and Services Tax Act (for brevity, GST Act).

2. Learned Counsel for the petitioner specifically took us to Section 61 of the GST Act, which was read with Rule 99 of the Bihar GST Rules, 2017. It is pointed out that Section 61, speaks of scrutiny of returns after which there is an obligation to inform the assessee about any discrepancy noticed, and call for the assessee's explanation. Sub-section (2) provides for the dropping of the proceeding if the explanation offered is accepted, and, in case no satisfactory explanation is furnished, then appropriate action could be taken under Sections 65 to 67 or Section 73 or 74. Rule 99 of the Bihar GST Rules, 2017 mandates that when a return furnished by the registered person is selected for scrutiny, the Proper Officer should issue a notice to the said person in Form GST ASMT-10 under the provisions of Section 61 with reference to the information available with the Proper Officer and details of discrepancy noticed.

3. We specifically looked at Annexure-1 show-cause notice, which indicates that the assessee was addressed with a



communication dated 31.03.2022 (wrongly noticed as 31.03.2023 in Annexure-1) to clarify on the discrepancy noticed. Annexure-3 is the notice issued, which is dated 30.03.2022. Though it is not headlined as Form GST ASMT-10, from the language in Annexure-3, it is identical to the model Form appended to the Rules. It was pointed out that there is a discrepancy insofar as the ITC declared in the annual return not having been reconciled with the financial statement (Table 14T of Form 9C).

4. The assessee also replied as per Annexure-4, but however, taking the contention that uploading Form GSTR-9C was optional and that the unreconciled ITC in Column T of the Table has been auto-populated. If the unreconciled ITC in Column T was auto-populated then it was noticed by the assessee, and it was incumbent upon the assessee to offer an explanation for this; rather than take a contention that Table 14 was optional.

5. We find absolutely no reason to entertain the writ petition on the grounds stated of the illegality, in an explanation as against the discrepancy, not having been sought for. There was a communication issued informing the discrepancy and seeking an explanation, to which the assessee also filed a reply,



which was found to be unsatisfactory. However, this would not result in an assessment as such since this is only the preliminary step to be taken, which would lead to and has led to the demand cum show-cause notice. The assessee would be entitled to appear and raise objections as against Annexure-1, if the proceedings are not already concluded.

6. The writ petition stands dismissed with the above reservation.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	22.07.2024.
Transmission Date	

