

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7911 of 2025

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M/s Durga Paper Plate Industries, a Proprietary Concern having its Place of Business at Ratanpura, P.S. Bhagwan Bazar, District Saran, through its Authorized Representative, Nehal Kumar, aged about 25 Years, Male, Son of Yogendra Prasad Gupta, Resident of Ratanpura, P.S. Bhagwan Bazar, District Chapra Saran.

... .. Petitioner

Versus

1. The Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. The Secretary, Ministry of Finance, Government of India, New Delhi.
3. The State of Bihar through the Commissioner of State Tax Cum Secretary, Department of State Tax, Government of Bihar, Main Secretariat, Patna.
4. The Commissioner of State Tax Cum Secretary, Department of State Tax, Government of Bihar, Main Secretariat, Patna.
5. The Additional Commissioner, State Tax, Saran Division, Chapra (Saran)
6. The Deputy Commissioner of State Tax, Saran.
7. The Joint Commissioner, State Tax, Saran Circle, Chapra.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Mohit Agarwal, Advocate Mr. Aman Kumar, Advocate Mr. Vikash Khanna, Advocate
For the Respondent/s	:	Mr. Additional Solicitor General
For the Resp. No. 1 & 2	:	Mr. Amit Pandey, Sr. SC, CGST & CS

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 14-07-2025

Heard learned counsel for the petitioner and learned counsel for the respondents.

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



“(a) For quashing the ex parte Assessment Order dated 28.08.2024 passed under Section 73(9) of the BGST Act, 2017 by the Deputy Commissioner, State Tax, Saran Circle, Chapra and subsequent demand raised in Form DRC 07 dated 28.08.2024 with respect to Financial Year 2019-20 as the same has been passed without granting any opportunity of hearing as contemplated under Section 75(4) of the BGST Act, 2017 and also without service of any notice, much less, show cause notice by any mode of service as contemplated under Section 169 of the BGST Act, 2017;

(b) For holding that passing of the ex parte impugned assessment order dated 28.08.2024 without granting an opportunity of hearing as contemplated under Section 75(4) of the BGST Act, 2017 is violation of principle of natural justice and the impugned assessment order is liable to be quashed;

(c) For holding that as the Petitioner Firm was not served with the purported show cause notices or the impugned ex parte assessment order by a valid mode of service as contemplated under Section 169 of the BGST Act, 2017, the same amounts to principle of natural justice and the impugned order is liable to be quashed and set aside;

(d) For holding that mere uploading of Notices under the heading of Additional Notices and Orders’ on the GST portal cannot be considered to be a valid mode of service of notice as required under Section 169 of the BGST Act, 2017;

(e) For holding that in the facts of the present case, the impugned assessment order dated 28.08.2024 is an ex parte order as the notices were never served upon the Petitioner firm in terms of Section 169 of the BGST Act, 2017 nor the Petitioner was granted an opportunity of



hearing in terms of Section 75(4) of the BGST Act, 2017; and/or for any other relief(s) as Your Lordships may deem fit and proper in the facts of the present case and in the interest of justice.”

Brief Facts of the Case

3. The petitioner is a proprietorship firm engaged in the business of trade of foodgrains and is said to be a manufacturer and trader of paper cups, plates and other similar products. The firm is registered with the respondent authorities under the Goods and Services Act.

4. It is the case of the petitioner that for the financial year 2019-20 Return was filed and admitted tax were deposited by the petitioner. All of a sudden, the petitioner got a phone call from it's bank, namely, ICICI Bank, Chapra Branch, Saran that a direction for attachment of bank account of the petitioner firm has been issued by the respondent Joint Commissioner, State Tax, Saran Circle, Chapra for recovery of some demand. It is stated that the information was given orally, the copy of the attachment letter/order was not made available to the petitioner.

5. From the office of the Joint Commissioner, State Tax, Saran Circle, Chapra, the petitioner came to know that the order dated 28.08.2024 (impugned order) has been passed under Section 75(9) of the Bihar Goods and Services Tax, 2017 (in short 'BGST



Act, 2017) with respect to financial year 2019-20 whereby a total demand including interest and penalty to the tune of Rs.7,21,819.00/- has been raised. The petitioner was informed that the order has been uploaded on the GST Portal of the petitioner firm and he was denied a hardcopy of the order despite request.

Submissions on behalf of the Petitioner

6. Learned counsel for the petitioner submits that on verification, the petitioner came to know that under the heading 'Notices and Orders' one notice under Section 46 of the BGST Act, 2017 was issued which was on account of delay in filing of return and a notice type order/Summary order dated 07.12.2019 for Rs.1,95,409.98/- were there but no other notice of any nature or order of any kind was uploaded on the common portal under the heading 'Notice and Orders' so copy of this screenshot of the GST Portal of the petitioner has been enclosed as Annexure 'P/1' to this writ application.

7. Learned counsel submits that on further verification, under the heading 'Additional Notices and Orders', the petitioner firm learnt that altogether ten documents were uploaded on various dates. Thus, it appeared that SCNDRC 01 was uploaded on GST Portal under the heading 'Additional Notices and Orders' on 21.05.2024. No intimation of DRC-01A is present. The petitioner



found that it was an *ex parte* assessment order under Section 73(9) of the BGST Act, 2017 and the same was uploaded under the heading 'Additional Notices and Orders'. The order was followed with DRC 07 i.e. the summary of order under Section 73 whereby a total demand to the tune of Rs.7,21,819.00/- including interest and penalty was raised against the petitioner firm. Thereafter, a proceeding for recovery was initiated.

8. Learned counsel submits that Section 169 of the BGST Act, 2017 deals with the provision of service of notice in certain circumstances. Section 169(1) provides the methods for service of any decision/order/summons/ notices or other communications under the Act or Rules made thereunder. Section 169(1)(d) provides one of the methods of serving of notice by making it available on the common portal. In this case, the summons and notices were required to be uploaded under the heading 'Notices and Orders' on the GST Portal of the assessee and that could only be considered to be a valid service of notice. In the present case, the Department did not follow the correct procedure.

9. Learned counsel has relied upon the judgment of a learned Co-ordinate Bench of this Court in **CWJC No. 5661 of 2025 (M/s Shree Shyam Trading Co. versus the Union of India**



and Others) decided on 09.07.2025 in which learned Co-ordinate Bench has held in similar circumstance that merely uploading the proceedings in a Portal would not suffice. It has been observed that every day Registered Company cannot peruse the Portal as to whether respondents have uploaded certain material information or not. Therefore, it is mandatory on the part of the official respondents to comply minimum two modes mentioned in Section 169 of the GST Act, 2017.

10. Learned counsel further submits that in the present case, no notice in DRC 01A, DRC 01, DRC 07 were ever uploaded under the heading 'Notices and Orders'. It is submitted that the case of the petitioner is squarely covered by a recent judgment passed by this Court in the case of **M/s Lord Vishnu Construction Pvt. Ltd. Versus The Union of India and Others (CWJC No. 5291 of 2024 decided on 03.03.2025)**, wherein assessment order was passed under Section 73(9) of the GST Act, 2017 which was set aside holding that as the notices were uploaded under the heading 'Additional Notices and Orders' and not under the heading 'Notices and Orders' on the common Portal, the petitioner has made out a case for interference.

11. In course of hearing of the writ application, learned counsel has taken this Court through the summary of show cause



notice dated 21.05.2024 (Annexure 'P/3'). It is pointed out that the Deputy Commissioner, State Tax, Saran Circle-1, Chapra while issuing Annexure 'P/3' only mentioned the date by which reply has to be submitted i.e. 20.06.2024. In the column meant for date of personal hearing, time of personal hearing and venue where personal hearing will be held, the Deputy Commissioner has not provided any date and in all these columns 'NA' has been mentioned which clearly shows that no date of personal hearing was given in the notice. Thus, it is submitted that *ex parte* assessment order is bad in law and the same is liable to be set aside.

Submissions on behalf of Respondents

12. A counter affidavit has been filed on behalf of contesting respondent no. 6 sworn by the Deputy Commissioner, State Tax, Saran Circle-1, Chapra. It is the case of the respondent that the petitioner filed GST Return for the year 2019-20. Subsequently, it was detected by the respondent Assessing Authority that the petitioner had availed input tax credit in excess of its eligibility as per GSTR-2A. On the basis of the discrepancy, the Respondent Assessing Authority served a show cause notice dated 21.05.2024 under Section 73 of the CGST/BGST Act on the petitioner through GST Portal. It is stated that the petitioner did



not act or respond to the show cause. This resulted into creation of the aforesaid demand comprising tax, interest and penalty vide order dated 28.08.2024. The petitioner did not assail the assessment order in statutory appeal and has filed the present writ application. The contention is that the writ application is fit to be rejected on the ground of availability of the alternative statutory remedy of an appeal.

13. While answering the statements made in the writ application, the respondent no. 6 submits that it is the duty of the taxpayer to check the GST Portal from time to time to see if any communication has been sent to it, whenever any notice is uploaded by the Adjudicating Authority on the GST Portal, the system automatically sends intimation thereof to the taxpayer through email as well as SMS. It is submitted that the petitioner deliberately ignored all the communications sent to it by the Respondent Assessing Authority.

14. As regards the allegation that the notice was uploaded under 'Additional Notices and Orders', Respondent no. 6 has submitted that it is misleading. At the Assessing Authority's end, the show cause notice were uploaded on the Portal and the GST software is so devised that at the taxpayer's end, the notices



pertaining to assessment are visible/available under 'Additional Notices and Orders'.

15. The respondent no. 6 has tried to explain as to how to navigate to notices tab and what can be viewed under different tabs/ buttons.

16. It is submitted that Section 169 of the CGST/BGST Act provides for making a notice/ order etc. available on the GST Portal only. According to respondent no. 6, the service of notice is in accordance with the provisions of 169 of the CGST/BGST Act.

17. Regarding the opportunity of personal hearing, it is submitted that on perusal of the detailed show cause notice appended to the DRC-01 (Annexure 'P/3' to the writ application) it would appear that the opportunity of personal hearing was very much afforded to the petitioner inasmuch as the last line of the notice says that if the taxpayer so desires, he can appear before the assessing authority with all documents/evidences on any day within the deadline specified in the notice.

18. In course of hearing, learned counsel for the respondents has though relied upon the paragraph '15' of the counter affidavit but after going through Annexure 'P/3', it is admitted that in the column meant for providing a date of personal hearing, time of personal hearing and venue of personal hearing,



nothing has been mentioned and in all these columns 'NA' has been mentioned by the Authority issuing Annexure 'P/3'. As regards the stipulation that the Assessee could have appeared on any date of hearing, it has been pointed out by learned counsel for the petitioner that while 20.06.2024 was fixed for filing of the show cause, if the Assessing Officer would have formed an opinion after going through the show cause that an adverse order is to be passed, in that circumstance as per mandate of Section 73(9), he was required to give an opportunity of personal hearing. In this case, all that was provided in the notice (Annexure 'P/3') was a date for filing of the show cause but even this was not duly served.

Consideration

19. Having heard learned counsel for the petitioner, learned counsel for the State as also on perusal of the records, this Court finds that so far as mode of service of notice is concerned, there is no denial of the fact that notice and order were uploaded under the heading 'Additional Notices and Orders'. On perusal of the counter affidavit, it appears that so far as the uploading of summary of assessment orders in the form of DRC 07 is concerned and the notices pertaining to return module comprising GST DRC 01B and GST DRC-01C are concerned, those are required to be uploaded under the heading 'Notices and Orders'.



20. In the case of **M/s Lord Vishnu Construction Pvt. Ltd.** (supra), this Court had occasion to consider this aspect of the matter and having noticed the judgment of the Hon'ble Division Bench of Delhi High Court in the case of **Anhad Impex Through its Partner & Anr. Versus Assistant Commissioner Ward 16** reported in **2024 (2) TMI 1070** and the judgment of the Hon'ble Allahabad High Court in the case of **Ola Fleet Technologies Pvt. Ltd. Versus State of U.P. and Others (Writ Tax No. 855 of 2024 decided on 22.07.2024)**, this Court has held in paragraphs '25' and '26' as under:-

“25. In the opinion of this Court, the purpose behind service of notice is to make an Assessee aware of the notice/summons/orders/decisions or any communication issued by the Department. Thus, this aspect of the matter is required to be looked into by the Department in order to ensure itself that the notices are duly served. For the present, this Court is not going into this issue and keeping it open to be considered in an appropriate matter. In the meantime, the Department may take a view on it, if so advised.

26. Since we have found that in the present case there is an assertion that the notice/show-cause/reminders all were placed under the heading 'additional notices and orders' and the screenshot placed on record has not been denied by the respondents and there is no specific averments in the counter affidavit/supplementary counter affidavit that notices/show- cause/communication were put under the heading 'notice and order' on the common portal, we are of the view that petitioner has made out a case for interference. The ends of justice requires that the impugned order as contained in Annexure-4 and 4/1 be set aside and we accordingly do so.”



21. This Court has also found that Section 75(4) of the CGST/BGST Act clearly provides that an opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty or where any adverse decision is contemplated against such persons. It is crystal clear from sub-Section (4) of Section 75 that after receipt of the show cause from the Assessee, stage of hearing shall come only after the authority contemplates passing of any adverse decision against such person.

22. Admittedly, in the present case, when Annexure 'P/3' was issued no date for personal hearing was fixed and according to this Court, that was not occasion to fix the date of personal hearing because the authorities were still looking for response only. Thus, Annexure 'P/3' cannot be construed as an opportunity of personal hearing.

23. No personal hearing has been given to the petitioner as required by the Statute.

24. In result, the impugned orders are liable to be set aside. Accordingly, we set aside the impugned orders on account of non-observance of statutory procedures. While setting aside the *ex parte* assessment order and the consequential order of attachment, we grant liberty to the petitioner to file it's response



before the competent authority within two weeks from the date of uploading of this judgment, whereafter in case the Assessing Officer contemplates to pass any adverse order, he shall provide an opportunity of personal hearing to the petitioner and pass a reasoned order.

25. All these exercise shall be completed within a period of three months from the date of uploading of this judgment.

26. This writ application is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

SUSHMA2/-

AFR/NAFR	
CAV DATE	
Uploading Date	15.07.2025
Transmission Date	

