

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.8422 of 2024**

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M/S R.S. Enterprises, having GSTIN- 10LJVPS3570C1ZW a proprietary concern having its office Holding No-184, Ward No-19, Circle No-12, Near H.P.( Sonali) Petrol Pump, Mohalla- Pahari, Post-Gulzarbagh, Police Station Didarganj Patna, Bihar- 800007 through its proprietor Sarita Devi Soni, Gender-Female, aged about 36 years, Daughter of Shri Haridwar Shah, Resident of East of Kabristhan, Near Bank of India, Mohalla- Chiraiyatand, Post- G.P.O., Police Station - Jakkanpur, Patna, Bihar 800001.

... .. Petitioner/s

Versus

1. The State of Bihar through The Principal Secretary, State Tax, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. The Principal Secretary Cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
3. The Joint Commissioner of State Tax, (In Charge) Patna City West Circle.
4. The Assistant Commissioner of State Tax, Patna City West Circle.
5. The Joint Commissioner of State Tax, (In Charge) Patna South-1 Circle
6. The Assistant Commissioner of State Tax, Patna South -1 Circle.
7. Shri Manvendra Singh Parihar, ACST, Patna City, West Circle.
8. Smt. Smriti Sanjayam, Then ACST, Patna City, West Circle.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Bijay Kumar Gupta, Advocate  
Mr. Manish Kumar, Advocate  
For the Respondent/s : Mr. Vikash Kumar, Standing Counsel (11)

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

**Date : 27-11-2024**

The controversy revolves around the inspection



conducted at the premises of the petitioner on 26.06.2023 based on which an assessment order was issued as Annexure-P/4 which is challenged in the above writ petition.

2. We read orders dated 19.06.2024 and 03.7.2024 which are extracted hereinbelow:-

19.06.2024:

*“The inspection conducted which led to Annexure-P/1 report and the assessment order did not comply with the provisions of the CrPC, is the argument. Section 67 of the Bihar Goods and Services Tax Act specifically requires an inspection to be conducted in accordance with the Criminal Procedure Code. Section 100 of the CrPC mandates that there shall be two witnesses when the inspection is conducted.*

*2. The learned Government Advocate submits that the inspection report has not been produced in its totality. It is also submitted that the report was accepted by the petitioners representative without demur and there was no such contention raised before the Assessing Officer.*

*3. We are of the prima facie opinion that merely because no such objection was raised before the inspecting team or the Assessing Officer, it would not restrict the petitioner from raising a ground which goes to the very root of the matter, to vitiate the inspection conducted.*

*4. In such circumstances, we direct the respondents to file a counter affidavit producing sufficient evidence to show the inspection having been conducted in the presence of two witnesses.*

*5. Post this matter on 28th of June, 2024.*

*6. In the meantime, there shall be stay of recovery.*



03.07.2024:

*Learned Government Advocate points out that there were independent witnesses at the inspection and they have signed on the document. It is also pointed out that there is the document. It discrepancy in the last page of Annexure-P/1 which clearly indicates that the petitioner has made some corrections in the same.*

*2. Annexure-P/1 is the inspection report produced by the petitioner, wherein, the names of Rajesh Kumar Swarnkar and Pintu Kumar are shown as witnesses. In page no. 27 also the names of Rajesh Kumar Swarnkar and Pintu Kumar are seen. Both of these are the representatives of the petitioner is the submission. Insofar as the inspection report produced alongwith the counter affidavit, the witnesses are shown as Govind Kumar and Sahil Kumar @ Pintu Kumar, the last of whom the petitioner's own representative. We see from page no. 32 (of the counter affidavit) which is the last page of the report, that it is different from page 27 (of the writ petition) of the copy of original report where the witnesses are shown as Govind Kumar and Pintu Kumar @ Sahil Kumar. Rajesh Kumar Swarnkar has signed.*

*3. On the discrepancy pointed out, learned Counsel for the petitioner has produced before us the carbon copy of the report supplied to him which shows it to be in consonance with that produced as Annexure-P/1.*

*4. We hence direct the learned Government Advocate to produce the original files and we prima facie find that there is some interpolation made by the officers who carried out the inspection. In such circumstance, we implead the then incumbent officers Shri Manvendra Singh Parihar, then ACST, Patna City, West Circle and Smt. Smriti Sanjayam, then ACST, Patna City, West Circle as the additional*



*respondents; who conducted the inspection and prepared the report.*

*5. Learned Government Advocate shall inform the Additional respondents about their impleadment and they can file their affidavits in explanation.*

*6. List this case on 30.7.2024.”*

3. Today, the files as produced by the learned Government Advocate, were placed before us, which indicates that the inspection report available in the files is akin to that produced as Annexure-R/1 in the counter affidavit of the Assistant Commissioner of State Tax, Patna City, West Circle ( Respondent no. 4) dated 03.09.2024. We see that the recitals after the signature of the Officers is absent in the carbon copy supplied to the petitioner, a copy of which was produced as Annexure-P/1 in the writ petition. The original copy of the carbon copy, as issued to the petitioner, was produced before us across the Bar by the learned Counsel for the petitioner. The carbon copy produced is akin to Annexure-P/1 produced in the writ petition. We see that the signature of only one independent witness is recorded in the carbon copy.

4. The learned Government Advocate submits that after the inspection report was prepared and the Officers signed on it, the carbon copy was supplied to the petitioner. Later, the the signature of the witness was obtained and so was the signature of the employees of the assessee, on the original



inspection report. It is also submitted that when remote places are inspected, there is little chance of getting independent and respectable inhabitants of the locality for the purpose of witnessing the inspection and endorsing the inspection report.

5. We see from the original produced that, only one witness has signed the document that too without any identification or details regarding his address or at least the mobile number.

6. In the above circumstances, we have to find that the inquiry is carried out without any witnesses which would go against the provision under Section 67 of the Bihar Goods and Services Tax Act, 2017 read with Section 100 of the Criminal Procedure Code; which later provision refers to two independent and respectable witnesses being participated in the inspection on searches conducted under that Chapter in the Cr.PC.

7. On the above reasoning, we have to set aside the order passed based on the inspection carried out and we caution the Officers insofar as such inspections carried out without independent and reasonable persons of the locality; which they could requisition even from any Government office within the locality.

8. The writ petition stands allowed.



9. The records have been perused by us and handed  
back to the learned Government Advocate.

**(K. Vinod Chandran, CJ)**

**( Partha Sarthy, J)**

Harsh/

<b>AFR/NAFR</b>	
<b>CAV DATE</b>	N.A.
<b>Uploading Date</b>	29.11.2024
<b>Transmission Date</b>	

