

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1898 of 2023

CTS Industries Limited a Company incorporated Under the Companies Act, having its Office at Collegiate School Road, jagir Mohalla, Begusarai, Bihar 851101 through its Director Purushottam Kumar Tulsyan, (Male, aged about 54 Years) Son of Sri Sitaram Tulsyan residing at A-45, Choudhary Farm, Block A, Shanti Kunj Vasant Kunj, Vasant Vihar, South West Delhi 110070.

... .. Petitioner

Versus

1. Directorate General of GST Intelligence, Patna Zonal Unit through its Intelligence Officer having its Office at Cybotech Tower, Near Pani Tanki More, Boring Patliputra Road, Patliputra, Patna-800013,
2. Asst. Commissioner of State Tax, Begusarai Circle, Begusarai.

... .. Respondents

with

Civil Writ Jurisdiction Case No. 2806 of 2023

CTS Industries Limited a Company incorporated under the Companies Act having its office at Collegiate School Road, Jagir Mohalla, Begusarai, Bihar 851101 through its Director Purushottam Kumar Tulsyan, (Male, aged about 54 Years), Son of Sri Sitaram Tulsyan, Residing at A- 45, Choudhary Farm, Block A, Shanti Kunj, Vasant Kunj, Vasant Vihar, South West Delhi - 110070.

... .. Petitioner

Versus

1. Directorate General of GST Intelligence Patna Zonal Unit through its Intelligence Officer having its office at Cybotech Tower, Near Pani Tanki More, Boring Patliputra Road, Patliputra, Patna - 800013.
2. Asst. Commissioner of State Tax, Begusarai Circle, Begusarai.

... .. Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 1898 of 2023)

For the Petitioner	:	Mr. D.V. Pathy, Senior Advocate Mr. Sadashiv Tiwari, Advocate Mr. Hiresh Karan, Advocate Ms. Shivani Dewalla, Advocate Ms. Prachi Pallavi, Advocate
For the CGST & CX	:	Dr. Krishna Nandan Singh, ASG Mr. Anshuman Singh, Senior SC Mr. Shivaditya Dhari Sinha, Advocate
For the State	:	Mr. Vikash Kumar, SC-11

(In Civil Writ Jurisdiction Case No. 2806 of 2023)

For the Petitioner	:	Mr. D.V. Pathy, Senior Advocate Mr. Sadashiv Tiwari, Advocate Mr. Hiresh Karan, Advocate Ms. Shivani Dewalla, Advocate Ms. Prachi Pallavi, Advocate
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For the CGST & CX : Dr. Krishna Nandan Singh, ASG
Mr. Anshuman Singh, Senior SC
Mr. Shivaditya Dhari Sinha, Advocate
For the State : Mr. Vikash Kumar, SC-11

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

Date : 08-04-2025

Heard Mr. D.V. Pathy, learned Senior Counsel assisted by Mr. Sadashiv Tiwari, learned counsel for the petitioner, Dr. K.N. Singh, learned Additional Solicitor General assisted by Mr. Anshuman Singh, learned Senior Standing Counsel for the CGST and CX and Mr. Vikash Kumar, learned Standing Counsel-11 for the State.

2. In these two writ applications, the only difference is with respect to the assessment year, otherwise the impugned order in both the writ applications remains the same.

3. In CWJC No. 1898 of 2023 which has been taken up for purpose of argument and reference of the materials on the record, the writ petitioner has prayed for the following reliefs:-

“i) the order dated 28.06.2022 (as contained in Annexure-5 Series) passed by the respondent no. 2 for the period 2017-18 under Section 74(9) of the Bihar Goods and Services Tax Act, 2005 (hereinafter called the Act) in contravention to Section 6(2) of the Central Goods and Services Tax Act, 2005 be quashed.



ii) the respondent no. 2 be directed not to resort to any coercive means to recover disputed demand of tax raised in pursuance of the order of assessment.

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

4. It is the case of the petitioner that a search operation was carried out by the officers of Respondent No. 1 in the premises of the petitioner company. Certain papers and documents including purchase invoices were found. A *panchnama* dated 06.07.2021 (Annexure- ‘1’) was prepared. Thereafter, summons as contained in Annexure- ‘2’ Series to the writ application was issued by the Senior Intelligence Officer of Respondent No. 1. The petitioner claims that pursuant to the said summons, the petitioner appeared through its representative and submitted all the documents. By issuing yet another summon dated 31.08.2021, the Respondent No. 1 called for some information. It is the stand of the petitioner that on the basis of a letter dated 08.12.2021, the Respondent No. 2 initiated scrutiny of returns under Section 61 of the Bihar Goods and Services Tax Act, 2005 (in short ‘BGST Act, 2005’).

Submissions on behalf of the Petitioner

5. Mr. D.V. Pathy, learned Senior Counsel for the petitioner has assailed the order passed by the Assistant



Commissioner, State Tax, Begusarai Circle, Begusarai as contained in Annexure- '5' on the ground that this order has been passed on the basis of an information received from the Additional Director General, Directorate General of Goods and Service Tax Intelligence (DGGI), KZU, Kolkata vide Letter C.No. DGGI /INV/GST/140/2021-Gr.C-Pr.ADG-DGGI-ZU-

KOLKATA/03/2021-22 dated 08.12.2021. It is submitted that, in fact, the letter dated 08.12.2021 of the Central Agency, namely, DGGI would show that the said central agency was carrying on an investigation into the affairs of M/S D.S. Bitumix. During said investigation, it was found that M/S D.S. Bitumix is a non-existent firm. For this reason, the registration of the said firm was canceled in exercise of power under Section 29(2) read with Rules 21(a) & 21(b) of the WBGST/CGST Act-2017, with effect from 01.07.2017.

6. Learned Senior Counsel submits that from the impugned order (Annexure- '5') itself, it would appear that the central agency had already initiated a proceeding in the matter and once that proceeding had been initiated, an authority under the State would have been advised to refrain from initiating another proceeding in the same matter. Putting reliance upon the circular of the Central Board of Indirect Taxes and Customs (in short



‘CBIC’) in the matter of initiation of intelligence based enforcement action vide Circle No. D.O. F.No. CBEC/20/43/01/2017-GST (Pt.) dated 05th October, 2018 (Annexure- ‘6’), learned Senior Counsel submits that the authority which initiates action on the basis of the intelligence information is empowered to complete the entire process of investigation, issuance of SCN, adjudication and recovery, filing of appeal etc. arising out of such action. It is his submission that the impugned order as contained in Annexure- ‘5’ has been passed by the Assistant Commissioner of State Tax (Respondent No. 2) in complete violation and disregard to the directions contained in the circular of the CBIC.

7. Learned Senior Counsel has placed before this Court Section 6(2)(b) of the CGST/BGST Act, 2017 to submit that according to this provision, where a Proper Officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceeding on a subject matter, no proceeding shall be initiated by the Proper Officer under this Act on the same subject matter. Relying upon this provision, learned Senior Counsel would submit that in this case, once the authority under the central agency had initiated the proceeding, the



State Authority could not have initiated yet another proceeding in the same subject matter.

8. Learned Senior Counsel has further placed before this Court the developments which have taken place during pendency of the writ application. By enclosing a copy of the order dated 03.02.2025 passed by the Assistant Commissioner, Central GST and Central Excise Division, Begusarai, with the supplementary affidavit filed on behalf of the petitioner, learned Senior Counsel submits that by Annexure 'P-9', now the Assistant Commissioner, Central GST and Central Excise Division has passed an order under Section 74(9) of the CGST Act, 2017 read with Section 20 of the IGST Act, 2017.

9. It is submitted that the authority under the central agency has once again considered the fact that M/S D.S. Bitumix, Kolkata is a non-existent firm. It is submitted that no doubt, in Annexure 'P-9', the authority under the central agency has found yet another firm, namely, M/S Karan International, New Delhi also a non-existent firm and by that, the genuineness of the transactions with these two firms have not been proved by the purchasing dealer, his submission is that so far as the purchases from M/S D.S. Bitumix is concerned, it has been held fraudulent once again by the authority under the central agency. In the second writ



application, however, there is no such order like Annexure 'P-9'. It is made clear that Annexure 'P-9' has only been brought by way of supplementary affidavit on the record and no challenge has been thrown to this order.

10. It is lastly submitted by Mr. Pathy, learned Senior Counsel that the impugned order (Annexure- '5') would be bad in law for non-observance of the mandatory provision of sub-section (4) of Section 75 of the CGST/BGST Act, 2017. Learned Senior Counsel has relied upon a recent judgment dated 29.01.2025 passed by the learned co-ordinate Bench of this Court in CWJC No. 7830 of 2024 (Tata Projects Limited Vs. Union of India and Others) to submit that in similar circumstance, the learned co-ordinate Bench held that the authority were required to give an opportunity of hearing to the petitioner if any adverse order was contemplated against him.

Submissions on behalf of the State

11. On the other hand, Mr. Vikash Kumar, learned Standing Counsel-11 for the State submits that on bare perusal of the order passed by the State Tax Authority, it would appear that the said order came to be passed while exercising power under Section 61(1) of the BGST Act read with Rule 99(1). Referring to Section 61 of the BGST Act, learned SC-11 submits that Section



61 would fall under Chapter XII of the CGST/BGST Act, 2017. Chapter XII deals with the assessment. Section 61 of the BGST Act talks of scrutiny of returns. In course of scrutiny of returns, the Proper Officer is empowered to verify the correctness of the return. In case of any discrepancies noticed by him, he may seek explanation from the registered person. Under sub-section (3) of Section 61 of the BGST Act, in case, no satisfactory explanation is furnished within a period of 30 days of being informed by the Proper Officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the Proper Officer may initiate appropriate action including those under Section 65 or Section 66 or Section 67 of the BGST Act or proceed to determine the tax and other dues under Section 73 or Section 74 of the BGST Act.

12. Learned SC-11 submits that the order as contained in Annexure- '5' came to be passed upon scrutiny of the returns. Since the fact as to cancellation of the registration of M/S D.S. Bitumix had been communicated by the DGGI, Kolkata, that was taken note of in the impugned order but it cannot be said and allowed to be argued that the order as contained in Annexure- '5' is based on the investigation initiated by the central agency. That is



one of the information which has been taken into consideration but the order has been passed upon scrutiny of the returns and while doing so, the State Authority has issued notice and reminder to the petitioner but the petitioner failed to respond.

13. Learned SC-11 further submits that prior to passing of the order as contained in Annexure- '5', no proceeding in the same matter was initiated by the central agency against the petitioner. It is submitted that so far as Section 6(2)(b) is concerned, a bare reading of the same would show that it talks of initiation of any proceeding on a subject matter. It is only when a proceeding on the particular subject matter is initiated by the Proper Officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, no proceeding shall be initiated by the Proper Officer under this act on the same subject matter. In this case, the impugned order has been passed as back as on 28.06.2022 whereas from Annexure 'P-9' which is the order passed by the central agency, it would appear that the proceeding was initiated with issuance of a demand-cum-show cause notice dated 24.03.2023. Thus, after nine months of passing of the impugned order (Annexure- '5'), a proceeding was initiated by the central agency. It is submitted that the petitioner purposely did not bring the order as contained in Annexure- '5' to the notice



of the central agency and now the petitioner wants to take advantage of it which would not be permissible in accordance with law.

14. It is lastly submitted that so far as compliance with sub-section (4) of Section 75 of the BGST/CGST Act, 2017 is concerned, in the present case, the compliance is complete. In this respect, attention of this Court has been drawn towards the statement present in the impugned order (Annexure- '5') wherein it is recorded that the petitioner was served with a notice under Section 74 of the BGST Act, 2017 and he was given a demand-cum-show cause notice in GST DRC-01 dated 24.05.2022 but the petitioner did not submit any response to the same in GST DRC-06. At the same time, the petitioner did not deposit any amount. It is submitted that so far as the judgment in the case of Tata Projects Limited on which reliance has been placed by learned Senior Counsel for the petitioner is concerned, it would be evident on reading paragraph '8' of the said order that in the said case, the impugned order did not mention that show cause notice was issued to the petitioner and that the petitioner had failed to furnish a reply. The learned co-ordinate Bench, therefore, held that in absence of such material, one has to draw inference that impugned order is in



violation of sub-section (4) of Section 75 of the CGST Act, 2017.

The case is clearly distinguishable from the present one.

Submissions on behalf of the CGST & CX

15. Dr. K.N. Singh, learned ASG has represented the CGST & CX. It is submitted that on the date the impugned order (Annexure- '5') had been passed by the State Authority, the central agency had not initiated any proceeding, therefore, there is no violation of clarificatory circular issued by CBIC as contained in Annexure- '6' to the writ application.

16. Learned ASG has further submitted that the central agency has passed the order as contained in Annexure- 'P-9' in respect of M/S D.S. Bitumix also as no information with regard to the order passed by the State Authority was brought to the notice of the central authority. Annexure- 'P-9' is not under challenge in this writ application. It is his submission that at best, the petitioner may, if so advised, apply for a rectification in the order as contained in Annexure- 'P-9' to that extent.

Consideration

17. We have heard learned counsel for the parties and perused the records. So far as the challenge to the impugned order (Annexure- '5') is concerned, it is liable to fail for the reason that this order has not been passed during pendency of any proceeding



on the same subject matter with the central agency. The order (Annexure- '5') has been passed upon scrutiny in terms of Section 61(1) of the CGST/BGST Act, 2017 read with Rule 99(1). The assessing authority/Proper Officer has categorically mentioned in the impugned order that notice Online ASMT-10, Reminder-1 and Reminder-2 were issued but despite lapse of time, the registered dealer did not submit its reply in GST ASMT-11. The dealer did not reverse the ineligible Input Tax Credit. These facts mentioned in the impugned order have not been contested by the petitioner.

18. Further this Court finds that so far as the proceeding initiated by the central agency is concerned, the same was initiated by issuing a demand-cum-show cause notice dated 24.03.2023 by the Deputy Director, Directorate General of GST Intelligence, Zonal Unit, Patna (Respondent No. 1) to the petitioner. The very first line of the order as contained in Annexure- 'P-9' shows that the case was initiated with the issuance of the demand-cum-show cause notice dated 24.03.2023. In that view of the matter, the clarificatory circular as contained in Annexure- '6' to the writ application would become irrelevant for the purpose of the present case.

19. The submission of learned Senior Counsel for the petitioner that the basis of initiation of the proceedings and passing



of order as contained in Annexure- '5' is the investigation and the materials which were sought for by issuing summons contained in Annexures- '1', '2' and '4' by the central agency cannot be accepted on the face of the statement present in Annexure- '5' which have not been contested.

20. This Court further finds that a demand-cum-show cause notice was issued to the petitioner even under Section 74 of the CGST Act read with Rule 142 of the Rules framed thereunder. Section 74 of the CGST Act talks of determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful-misstatement or suppression of facts. According to sub-section (1), wherever it appears to the Proper Officer that there is any wrongful availment of input tax credit or where the input tax credit has been utilized by reason of fraud or any willful statement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made or who has wrongly availed or utilized input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with the interest payable thereon under Section 50 and a penalty equivalent to the tax specified in the notice.



21. In the present case, there is no denial of the facts mentioned in the impugned order (Annexure- '5') that the petitioner was issued a demand-cum-show cause notice in terms of sub-section (1) of Section 74 of the CGST Act, 2017. The fact remains that service of the demand-cum-show cause notice under sub-section (1) of Section 74 has also not been questioned and contested by the petitioner. It is also evident that in the show cause notice issued under sub-section (1) of Section 74, the petitioner was duly informed that he may appear before the authority for personal hearing either in person or through authorized representative. The petitioner was also informed that besides tax, he would also be liable to pay interest and penalty in accordance with the provisions of the law. Even the date of personal hearing was provided on 31.08.2021. This Court, therefore, finds that there was proper compliance with the principles of natural justice before passing of the impugned order as contained in Annexure- '5' to the writ application.

22. So far as the submission on the basis of sub-section (4) of Section 75 of the CGST/ BGST Act, 2017 is concerned, this Court finds that Section 75 provides general provisions relating to determination of tax. Under sub-section (4) of Section 75, it is provided that an opportunity of hearing shall be granted where a



request is received in writing from a person chargeable with tax or penalty, or where any adverse decision is contemplated against such person. It is with reference to this provision that when Tata Projects Limited case was being heard before the learned Co-ordinate Bench and it was pointed out that in the impugned order of the said case, there was no mention of issuance of show cause notice to the petitioner, the learned Co-ordinate Bench found that the requirement as envisaged under sub-section (4) of Section 75 of the CGST/ BGST Act, 2017 has not been complied with.

23. We agree with the submission of learned Standing Counsel-11 that the facts of the present case are completely distinguishable from that of Tata Projects Limited. In the present case, there is no contest on fact that a demand-cum-show cause notice was issued to the petitioner even at the stage of Section 74 but the petitioner did not respond to the said notice. The petitioner did not turn up on the date fixed in the matter for personal hearing. This being the position, we are of the considered opinion that there is no violation of principles of natural justice much less any violation of the statutory provisions as contained in sub-section (4) of Section 75 of the CGST/ BGST Act, 2017.

24. Having regard to the aforementioned discussions, we find no jurisdictional error on the part of the State Authority



(Respondent No. 2) in passing of the impugned order. The writ application is not fit to be entertained.

25. The petitioner, if so advised, may avail alternative statutory remedy, if any, available to the petitioner in accordance with law.

26. At this stage Mr. D.V. Pathy, learned Senior Counsel submits that he would prefer a statutory appeal within a period of two weeks from the date of receipt/communication of a copy of this order but in that case, if a question of limitation arises, this Court may direct the Appellate Authority to condone the delay.

27. Mr. Vikash Kumar, learned Standing Counsel-11, however, submits that in the present case, the petitioner has moved this Court in Writ Jurisdiction only after about seven months of the date of passing of the impugned order, therefore, a blanket order to condone the delay, at this stage, may not be in accordance with law.

28. Keeping in view the rival submissions, we leave it open for the parties to contest this issue before the Appellate Authority. We would only indicate that the Appellate Authority, shall, while taking a view on the issue of limitation, consider that the petitioner was pursuing his remedy in the Writ Court under



some bonafide belief and legal advice. Keeping this in view, an appropriate order may be passed on the question of limitation.

29. These writ applications stand disposed of accordingly.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

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CAV DATE	
Uploading Date	19.04.2025
Transmission Date	

