

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3099 of 2025

=====

Kaushal Kumar, S/o Ram Chandra Yadav, R/o At - Situaha, Simri
Bakhtiyarpur, P.O. and P.S. - Salkhua, District- Saharsa, Bihar.

... .. Petitioner

Versus

1. The State of Bihar through the Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
2. The Commissioner cum Secretary, Commercial Tax Department, Govt. of Bihar, Patna.
3. The Additional Commissioner of State Tax (Appeal), Purnia Division, Purnia.
4. The Assistant Commissioner of State Tax, Saharsa Circle, Saharsa.

... .. Respondents

=====

Appearance :

For the Petitioner : Mr. Gyan Shankar, Advocate
For the Respondents : Mr. Vikash Kumar, Standing Counsel (11)

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

2 19-06-2025 Heard learned counsel for the petitioner and learned

Standing Counsel-11 for the Respondents.

2. This writ application has been filed for the
following reliefs:-

“(i) For issuing a writ of certiorari or
any other appropriate writ
quashing/setting aside the summary
assessment orders dated 24.01.2020 and
19.02.2020 (Annexure- 1 & 2) passed
by Respondent No. 6 for period
October 2018 to March 2019 of F.Y.
2018-19 whereby and whereunder the
ex parte assessment order has been
passed for the aforesaid period and



thereby a total liability of Rs.84,644.00/- (with breakup as (a) CGST worth Rs.48,142/- with interest Rs.9,180/- thereupon; and (b) SGST worth Rs.18,142/- with interest Rs.9,180/- has been imposed on the petitioner;

(ii) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the demand issued in form DRC-07-dated 19.02.2020 (Reference No. ZA100220021840L) (Annexure-3) passed by Respondent No. 6 for OCT-2018 to MAR 2019 of F.Y 2018-19 whereby and whereunder the ex-parte demand order DRC 07 have been issued under the CGST/BGST Rules, 2017 for the aforesaid period and through the said DRC-07 an ex parte demand has been raised for the aforesaid period a total liability of Rs.84,644.00/- (with breakup as (a) CGST worth Rs.48,142/- with interest Rs.9,180/- thereupon; and (b) SGST worth Rs.18,142/- with interest Rs.9,180/- has been imposed on the petitioner;

(iii) For issuing a writ of certiorari or any other appropriate writ quashing/setting aside the appellate order dated 15.07.2021, contained in memo no.- 552 dated 15.07.2021 (Annexure-4) passed in Appeal No.- (ARN) AD100421001386W by the Respondent No.-5 whereby and whereunder the appeal filed by the petitioner has been dismissed on the



erroneous ground that the payment certificate produced by the petitioner in support of the Tax Deducted at Source by the Works Department for the period in question is not signed by the Executive Engineer, RWD, Simri Bakhtiyarpur, Saharsa completely ignoring Form 26AS.

(iv) For issuing a writ of mandamus or any other appropriate writ directing the Respondents not take any coercive action including recovery from bank account and third parties until pendency of the present writ application;

(v) For issuance of appropriate direction including the mandamus directing the respondents to pass fresh assessment order for the F.Y. 2018-19 upon considering the annual assessment filed by the petitioner for the said financial year to ascertain the actual tax liability, if any, on the petitioner for the period April, 2018 to March, 2019;

(vi) For holding that the impugned assessment order dated 24.01.2020 and 19.02.2020 and Appellate order dated 15.07.2021 have been issued in most illegal manner without examining the records and the supporting materials;

(vii) For passing any such other order/orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

3. The matter pertains to the period 01.10.2018 to



31.03.2019.

4. At the outset, Mr. Vikash Kumar, learned Standing Counsel-11 representing the respondents submits that this writ application may be disposed of in similar terms as has been done by a learned co-ordinate Bench of this Court in **CWJC No. 14554 of 2024 (M/s Maa Sunaina Construction Private Limited Vs. The Union of India and Others)**, a copy of the said judgment dated 21.10.2024 is available on the record.

5. For brevity sake, we would only reproduce the operative part of the judgment in the case of **M/s Maa Sunaina Construction Private Limited** (supra) hereunder:-

“3. This Court is, therefore, inclined to dispose of the instant writ petition in the following terms:-

(i) Subject to deposit of a sum equal to 10 percent of the amount of tax in dispute, if not already deposited, in addition to the amount deposited earlier under Sub-Section (6) of Section 107 of the B.G.S.T. Act, the petitioner must be extended the statutory benefit of stay under Sub-Section (9) of Section 112 of the B.G.S.T. Act. The petitioner cannot be deprived of the benefit, due to non-constitution of the Tribunal by the respondents themselves. The recovery



of balance amount, and any steps that may have been taken in this regard will thus be deemed to be stayed.

(ii) The statutory relief of stay, on deposit of the statutory amount, however in the opinion of this Court, cannot be open ended. For balancing the equities, therefore, the Court is of the opinion that since order is being passed due to non- constitution of the Tribunal by the respondent- Authorities, the petitioner would be required to present/file his appeal under Section 112 of the B.G.S.T. Act, once the Tribunal is constituted and made functional and the President or the State President may enter office. The appeal would be required to be filed observing the statutory requirements after coming into existence of the Tribunal, for facilitating consideration of the appeal.

(iii) In case the petitioner chooses not to avail the remedy of appeal by filing any appeal under Section 112 of the B.G.S.T. Act before the Tribunal within the period which may be specified upon constitution of the Tribunal, the respondent- Authorities would be at liberty to proceed further in the matter, in accordance with law.



(iv) If the above order is complied with and a sum equivalent to 10 per cent of the remaining amount of the tax in dispute is paid then, if there is any attachment of the bank account of the petitioner pursuant to the demand, the same shall be released.”

6. Learned counsel for the petitioner as well as learned Standing Counsel-11 for the State agree that the subject matter of the present writ application and the issues raised by the petitioner in the present writ application may be agitated before the Tribunal as and when constituted by the respondent authorities.

7. In the aforesaid view of the matter, this Court disposes of the present writ application in terms of paragraph ‘3’ of the judgment dated 21.10.2024 passed in CWJC No. 14554 of 2024.

8. This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

lekhi/-

U			
---	--	--	--

