IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10227 of 2024

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M/s Anjani Kumar Singh C/o Medicine Palace A proprietory concern having its office at, West Boring Canal Road, Opp. Maa Sharde Complex (S.B.I), Patna- 800001, Bihar through its priopprietor Anjani Kumar Singh (Male) aged about 66 years S/o Shri Ramchandra Prasad Singh R/o- 6/102, Indrapuri, Phulwari, P.S.- Phulwari, Patna- 800024, Bihar.

... ... Petitioner/s

Versus

1. Addnl. Commissioner (CCO) of CGST and Central Excise having its office at Ranchi Zone, Central Revenue Building (Annexe), 1 Floor, Virchand Patel Path, Patna- 800001, Bihar.
2. Superintendent of CGST and Central Excise CCO Ranchi Zone Patna having its office at S.K.Puri Range, Central Revenue Building (Annexe), 1st Floor, Virchand Patel Path, Patna- 800001, Bihar.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sadashiv Tiwari, Adv
For the Respondent/s	:	Dr. K.N. Singh, ASG
		Mr. Anshuman Singh, Sr. SC
		Mr. Shivaditya Dhani Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 28-08-2026

Heard learned counsel for the petitioner and learned Additional Solicitor General for the CGST and CX.

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

i) the order dated 21.03.2024 (as contained in Annexure-6) passed by the Respondent No. 1 imposing Service Tax, interest and penalty without consideration of the written submissions, the exemption Notification issued by the Central Government on the gross value of the contract

regarding service by way of loading, unloading, packing, storage or warehousing of rice and being contrary to Article 366 (29Ab) read with Entry 54 of List II and also Article 265 of the Constitution of India being wholly illegal and without jurisdiction be set-aside and quashed.
ii) the order dated 21.03.2024 (as contained in Annexure-6) passed by the Respondent No. 1 imposing Service Tax, Interest and Penalty without consideration of the written submissions and the documents filed along therewith run counter to the settled principles of natural justice and fair play in action being wholly illegal and without jurisdiction be quashed?
iii) for granting any other relief (s) to which the petitioner is otherwise found entitled to.

3. It is the case of the petitioner that he was appointed as regular handling and transport contractor by Food Corporation of India against the quoted price as per the tender. The petitioner has brought on record the details of the appointment of work regarding performance of the assigned work by way of Annexure-1 series.

4. By a show cause notice dated 27.04.2022, issued by respondent no. 2, the petitioner was called upon to file certificate of deduction of Income Tax at source in form 26 AS, Balance Sheet, ST 3 return, evidence of payment of Service Tax and the details of the work order. The petitioner claims that in compliance of the notice, he submitted all respective documents as required *vide* Annexure-2 series.

5. It is the case of the petitioner that petitioner also filed written submission with Annexures of all the documents required in the notice. It was specifically submitted by the petitioner that the contract executed by him with the Food Corporation of India falls within the entry 40 of Notification No. 04/2014 dated 17.02.2014 by virtue of which it would be exempted. The copy of the submission dated 12.12.2023 is Annexure- 3 to the writ application.

6. It is submitted that notwithstanding categorical submissions, the respondent no. 1 held that the payment received by the petitioner would fall under the head of “taxable service”. Accordingly, the Respondent No. 1 imposed Service Tax amounting to Rs. 60,88,607/- under section 73(2), equivalent penalty under under section 78 of Finance Act, 1994 read with section 174 of the CGST Act, 2017 and penalty of Rs. 10,000/- under Section 77(1)(a), penalty of Rs. 20,000/- in contravention of section 70 of Finance Act 1994 read with section 174 of CGST Act, 2017 and penalty of Rs. 60,200/- under Section 77(1)(c)(ii) of the Act read with section 174 of the CGST Act 2017. The copy of the impugned order dated 21.03.2024 in the present writ application is Annexure-6.

7. The petitioner is aggrieved by Annexure-6 to the writ application.

8. It appears on perusal of Annexure-6 to the writ application that the competent authority has passed the impugned order after taking note of the submissions made on behalf of the petitioner in response to the show cause notice.

9. In paragraph '4.3' and '4.4' of the impugned order, the competent authority has taken note of a document submitted by the noticee in his defence reply. Paragraph '4.5' and '4.6' of the impugned order read as under:

> ***4.5*** *I have gone through the documents listed above which were submitted during the personal hearing. I find that the notice have submitted copy of letter dated 13.04.2018 & 28.02.2018 issued by the Assistant General Manager, Food Corporation of India, Regional Office, Patna with regard to the contract agreement said to be executed for the F.Y. 2016-17 & 2017-18. I find that no Work Order or Agreement has been submitted by the said Noticee to establish their claim as provider of Service relating to Transportation and Handling of food grain. To establish the relation/connection with the nature of services rendered by the said noticee to the consideration received by them during the relevant period, work order issued by service receiver is required to be co-related with payment certificate, form 26AS and Balance Sheet/Profit & Loss Accounts for the said period but the work order for relevant period were not provided by them. Hence, in absence of work order for relevant period, payment received against taxable services which reflects in their Form 26AS for the relevant period cannot be co-related with the payment regarding rendering of the exempted services as claimed by the Noticee. Hence, I find that the documents provided by the said noticee are not enough/sufficient for granting them the benefit of exemption under claimed notification from payment of Service Tax on the consideration*

received in lieu of providing taxable services during the aforesaid period. Therefore, I find that they have provided taxable services which neither falls under any of the clauses of Section 66D of the Act, as amended from time to time, nor falls under any of the entries of the Mega Exemption Notification No. 25/2012-ST dated 20.06.2012, as amended. Hence, they contravened the provisions of Section 73(1) of the Finance Act, 1964 in as much as the service tax liability including cesses to be paid on the amount they received as consideration on account of providing taxable services during the relevant period. Further, no bills or invoice wise details have been submitted by the noticee, in absence of the same taxable value has been considered as alleged in the instant Show Cause Notice. Therefore, I hold that there is liability of payment of Service Tax amounting to Rs. 60,88,607/- (Rs. Sixty Lakhs Eighty Eight Thousand Six Hundred and Seven only) as calculated at Table- C above.

4.6 *The benefit of exemption/abatement cannot be extended to the noticee in the instant case as the noticee have not submitted all the supporting documents and therefore they have not proved their claim for exemption /abatement thereon. It is legally settled principle that the benefit of any exemption / abatement cannot be extended by the department suo-moto. In order to get the benefit of any exemption/abatement, the noticee/assessee have to prove by submitting supporting documents that they are eligible to the benefit of the exemption/abatement. In absence of documentary evidences supporting the claim of any exemption notification or abatement and their eligibility to the same, no benefit of abatement under any notification can be extended to them. The burden of proving the eligibility to the notification lies on the assessee/party who is claiming exemption. The Constitution Bench of Hon'ble Supreme Court in the case of Commissioner Vs Hari Chand Shri Gopal 2010 (260) E.L.T 3(SC 5 Member) has held that a party claiming exemption has to establish that he is eligible for exemption contained in the notification i.e. the burden of proof is on him.*

> *Further, Hon'ble Supreme Court in Mysore Metal Industries Vs Collector of Customs, Bombay 1988 (36) E.L.T 369(SC) observed- "The burden is on the party who claims exemption, to prove the facts that entitled him to exemption."*
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> *Recently in the case of Commissioner of Customs(Import) Vs. Dilip Kumar & Company (2018(361) E.L.T. 577(S.C.), the Hon'ble Apex Court has held that burden to prove entitlement of tax exemption in terms of the Notification is on the person claiming such exemption.*

10. We have noticed that the competent authority has relied upon the judgment of the Hon'ble Supreme Court in the case of Commissioner of Customs(Import) Vs. Dilip Kumar & Company 2018 (361) E.L.T. 577 (SC) to say that the burden to prove entitlement of tax exemption in terms of the Notification is on the person claiming such exemption.

11. A counter affidavit has been filed on behalf of the Food Corporation of Indian which has been sworn by the Assistant General Manager (Contract), Food Corporation of India, Regional Office, Patna. Attention of this Court has been drawn towards Sub Paragraph 'E' of Paragraph '5' of the counter affidavit of Respondent No. 3 which reads as under:

> *E. That as per record of writ application, on 27.04.2022 Respondent No. 1 has issued a Demand-cum- Show Cause notice stating therein that Petitioner have provided taxable services to various clients and which neither falls under any of the entries of the Mega Exemption list nor falls under any of the Mega Exemption notification, in as much as they have provided services in lieu of consideration money but have willfully escaped the assessment of taxable value by resorting to*

> *suppression with intent to evade the payment of service tax including Krishi Kalyan Cess and Swatch Bharat Cess total amounting Rs. 60,88,607 /- (Rs. Sixty Lakhs Eighty Eight thousand Six Hundred and Seven only) for the period from 2016-2017 (Oct-March) to 2017-2018 (upto June, 2017) which appears to be recoverable from the petitioner along with interest.*

12. It is the aforementioned Sub Paragraph 'E' under Paragraph '5' of the counter affidavit of Respondent No. 3 which has been pointed out to us by Dr. K.N. Singh, learned Additional Solicitor General. It is submitted that the Food Corporation of India has categorically stated that in the tender document, the approved rate of transportation is inclusive of all taxes including GST. It is submitted that infact, the petitioner is engaged in undue enrichment as he is collecting the tax under the GST but not depositing the same with the Government Exchequer. Such undue enrichment cannot be allowed.

13. At this stage, we have noticed that neither before the competent authority/assessing authority nor before this Court, the petitioner has produced the relevant tender document.

14. Learned counsel for the petitioner having faced this situation is unable to satisfactorily answer the query of this Court, as to why, he has withheld these document which he could have brought before the assessing authority as well as to the notice of this Court.

15. We have also noticed that the petitioner has not submitted any rejoinder to the counter affidavit of Respondent No. 3 which he seems to have received as back as on 12.12.2024.

16. In such circumstances, we are of the considered opinion that the impugned order does not require any interference by this Court sitting in its extraordinary writ jurisdiction.

17. At this stage, learned counsel for the petitioner submits that the petitioner may be granted liberty to prefer statutory appeal.

18. We dismiss the writ application. Petitioner may pursue his remedy, if any available to him in accordance with law. If any question of limitation arises for consideration, the competent court/forum shall consider the same keeping in view the period spent before this Court.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

Sunnykr/Mayank

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.08.2026
Transmission Date	NA