

Context: Petitioner purchased cycles from a wholesale dealer in Ludhiana. While the value of the goods was mentioned as Rs. 11,41,616/- in the invoice, inadvertently, the supplier entered Rs. 11,41,61603.36/- in the E-way bill. Therefore, proceedings were initiated against the Petitioner and demand was crystallized. The appeal filed by the petitioner was also rejected due to non-payment of 10% pre-deposit. Further, communication was issued by the authorities to various banks for non-payment of dues under Section 79(1)(c) (ii).



Held: The Patna High Court held that E-way bill is only a document supporting the transport and assessment cannot be based on the E-way bill. There is no inquiry conducted by the department in so far as the goods having been transported in excess of the invoice. Further, the HC was not inclined to remand the matter to the Appellate Authority as there is no provision by which the Appellate Authority can reckon the ground raised of an inadvertent mistake occurred at the hands of the supplier. Therefore, the HC invoked its extraordinary jurisdiction under Article 226 and set aside the order and held that demand must be assessed based on the tax invoice.

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4325 of 2023

M.S. Cycle Shop, MG Road, Aurangabad, Bihar through its Proprietor Md. Arman Alam, male aged about 30 years, resident of Village-Nawadih, near Masjid, P.S. Aurangabad, in the district of Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through Finance Secretary, Government of Bihar, Patna.
2. The Deputy Commissioner of State Tax, Aurangabad, Bihar.
3. The Additional Commissioner State Tax, Magadh Division, Gaya.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Sr. Advocate Mr. Abhishek Anand, Advocate Mrs. Madhuri Kumari, Advocate
For the Respondent/s	:	Mr. Vivek Prasad (GP-7)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-04-2023

The petitioner, an assessee under the Bihar Goods and Services Tax Act, 2017 (“the Act” hereafter), as is evident from Annexure-1 series of documents, is aggrieved with the orders passed on detention of his goods. An appeal filed also stood dismissed since he failed to deposit 10% of the tax due under Section 107(6) of the Act. The petitioner is before this Court with this petition under Article 226 of the Constitution of India only since there is no Tribunal constituted under the Goods and Services Tax Act.

2. The petitioner is a proprietor of a cycle shop in





Aurangabad. He purchased cycles from a wholesale dealer at Ludhiana, Punjab, the tax invoice of which is produced as Annexure-2 series. There were 382 units (bicycles) as seen from the tax invoice having a total value of Rs. 10,19,300. An IGST of Rs. 1,22,316 was paid. The total invoice value including tax came to Rs. 11,41,616. The petitioner transported the same based on an e-Way Bill dated 23.06.2018 uploaded on 23.06.2018 at 02:59 P.M. valid up to 06.07.2018, as is seen at Annexure-3 series of the writ petition. The e-Way Bill was uploaded by the supplier and in fact after the transport originated, Annexure-4 communication was sent to the petitioner by the supplier confirming the total invoice value of the Bill dated 21.06.2018 as Rs. 11,41,616/- but informing them that mistakenly the value was shown as 11,41,61603.36 in the e-Way Bill. The supplier along with Annexure-4 communication also gave a break-up of the 382 items transported.

3. The Joint Commissioner, State Tax, Aurangabad by Annexure-5 communication issued a letter to the various banks in Aurangabad initiating action against the petitioner for non-payment of dues under Section 79(1)(c)(ii). The Assessing Officer also issued Annexure-6 order against which appeal was rejected by Annexure-7 for reason of the non-payment of 10%





of the disputed tax. The petitioner submits that it was an inadvertent error committed by the supplier of the petitioner and the petitioner was not supplied with any goods in excess of the number stated in the tax invoice, nor was the goods delivered having more value than indicated in the tax invoice.

4. The learned Government Advocate resisted the claim of the petitioner and pointed out that there is a shortfall of Rs. 1,17,73,502/- in the tax payable by the petitioner. Intimations were given to the petitioner and the order was passed after hearing the petitioner. An appeal also stood rejected and there is no reason to invoke the extraordinary remedy under Article 226 of the Constitution of India. The learned Government Advocate submitted that if at all the extraordinary remedy is invoked then let the matter be remanded to the Appellate Authority and the petitioner also be directed to pay 10% of the disputed amount of tax.

5. We are not inclined to remand the matter to the Appellate Authority because there is absolutely no provision by which the Appellate Authority could reckon the ground raised of an inadvertent mistake having occurred at the hands of the supplier. Looking at the invoice, it is very clear that the quantity purchased by the petitioner was 382 bicycles, the description of





which is also clear from the invoice. The total value of the goods is Rs. 10,19,300. However, while entering the same in the e-Way Bill “03” was added after the value, thus converting the value of from a more than ten Lakhs to the value of more than ten Crores. The very same mistake was committed in entering the amounts due under IGST wherein two zeros were added after the actual tax payable as per the invoice which again raised the total amount, of a little above One Lakh to more than One Crore. There is also a confirmation issued by the supplier as we see from Annexure-4.

6. E-Way Bill is a document supporting the transport and an assessment cannot be based only on the e-Way Bill. There is no inquiry conducted by the department in so far as the goods having been transported in excess of the invoice produced as Annexure-2. The e-Way Bill correctly records the invoice number and the vehicle number. In fact, if the value shown in the e-Way Bill was the actual value then there would be far more items transported; it would have been almost 100 times the goods transported. We are unable to sustain the orders of the Assessing Officer, especially when from the facts, it is clear that it was an inadvertent omission. We are of the opinion this is a fit case where the extraordinary remedy can be invoked under





Article 226. We set aside the order of the assessment and as a consequence the rejection of the appeal will have no effect. The assessment would be on the basis of Annexure-2 tax invoice and not on the basis of the e-Way Bill.

7. We allow the writ petition setting aside the impugned orders and the consequential demand notices.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

Anushka/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	11.05.2023
Transmission Date	

