

Kaushlendra Kumar v. State of Bihar and Others

Case number: Civil Writ Jurisdiction Case No. 17860 of 2024

Decision date: 1 May 2025

GST input-tax-credit reconsideration under Section 16(5); independent illegality of premature recovery under Sections 78–79 and restitution with interest

Court: Patna High Court

Bench: Hon'ble Mr. Justice Rajeev Ranjan Prasad and Hon'ble Mr. Justice Ashok Kumar Pandey

Decision stage: Final writ judgment deciding the recovery/refund issue and remanding the input-tax-credit appeal for fresh consideration.

01 Facts of case and issues

The petitioner, a proprietorship supplying works-contract services for Bihar Government buildings, filed its March 2020 GSTR-3B on 7 December 2020. It claimed CGST and SGST input tax credit of Rs. 24,45,934 each. The Department denied the credit for breach of Section 16(4), and the 9 February 2021 assessment demanded Rs. 55,64,402 including tax, interest and penalty. The appellate authority rejected the appeal on 30 November 2022, considering itself unable to extend the statutory time.

The petitioner invoked the retrospectively inserted Section 16(5), which addressed specified financial years and returns filed by 30 November 2021. A separate controversy concerned recovery: after the appeal was dismissed, the Department wrote directly to the petitioner's contract employer on 28 December 2022 and recovered Rs. 50,75,214 from its bill on 2 January 2023. The taxpayer said no payment notice or written reasons for accelerated recovery had been given. Revenue relied on Section 79's recovery machinery.

Pinpoint: Paragraphs 2–9 and 14–18, physical pp. 3–10 (Court pp. 1–8).

02 Discussion by Hon'ble Court

The Court treated the two issues separately. On input tax credit, the appellate order pre-dated Section 16(5), so the appellate authority had had no opportunity to consider it. The State accepted that reconsideration was appropriate. The Court identified the statutory relaxation and ordered a fresh decision, without itself determining every condition of credit entitlement.

On recovery, the Court read Sections 78 and 79 together. Section 78 allows the taxable person three months from service of the order to pay; Section 79 supplies modes of recovery when the amount remains unpaid. A garnishee route through an employer does not itself remove the payment-period safeguard. The Court held this recovery hasty and contrary to statute. The three-month rule must be read with the Section 78 proviso reproduced in paragraph 21: a shorter period requires revenue-interest justification and reasons recorded in writing.

02 Discussion by Hon'ble Court

The Court expressly followed Sita Pandey and reproduced its recovery safeguards, including notice stating reasons and a shorter payment period where the proviso applies, reasonable notice before withdrawing attached funds, and a reasonable opportunity to approach a higher forum. References to UTI Mutual Fund, Mohinder Singh Gill and R.S. Joshi support the Court's discussion of fair process and quasi-judicial responsibility. These earlier decisions are described only as cited or reproduced here. The lack of a functioning Tribunal recorded in paragraph 19 belongs to the case's historical setting.

Pinpoint: Paragraphs 10–13, physical pp. 7–8; paragraphs 19–29, physical pp. 10–19. Sita Pandey paragraph 16 is a nested quotation within this judgment's paragraph 28, physical pp. 17–18.

03 Judicial decision and operative relief

Paragraph 13 sets aside the impugned appellate order in Annexure P1 and the consequential recovery, and remands the matter to the appellate authority for fresh consideration. It does not finally allow the claimed input tax credit or independently quash every notice and assessment challenged in the prayers.

For the independently unlawful recovery, paragraph 30 directs refund of the entire recovered Rs. 50,75,214 within two weeks from 1 May 2025, failing which interest is to run at 12% per annum. Paragraphs 32–33 separately direct simple interest at 6% per annum on the recovered amount from the date of recovery, 2 January 2023, until refund, payable simultaneously within two weeks. The judgment does not explain an overlap calculation for the two rates; it should not be converted into an aggregate 18% award or an invented retrospective 12% formula.

Paragraph 31 records that a separate 10% tax pre-deposit remained with the appellate authority. It does not deduct that deposit from the full-refund direction or order its separate repayment. The Court accepted the Assistant Commissioner's unconditional apology, imposed no costs and allowed the writ to the stated extent.

Pinpoint: Paragraph 13, physical p. 8; paragraphs 29–35, physical pp. 19–20 (Court pp. 17–18).

04 In favour of

Taxpayer on the final illegality-of-recovery finding, full restitution of the recovered sum and the specified interest directions. Input-tax-credit relief is a remand for fresh consideration, not a final merits allowance.

Two distinct remedies: final recovery/refund relief and an input-tax-credit appellate remand. Repayment, interest payment, the remand outcome and any subsequent direct appellate order were not verified.

Pinpoint: Paragraphs 13 and 29–35, physical pp. 8 and 19–20.

05 AKHB REVIEW POINT

AKHB analysis: Separate an objection to the method and timing of collection from the underlying tax dispute. Preserve the order-service record, appeal history, any shorter-period notice and written reasons, garnishee communication, actual debit date and evidence of an existing pre-deposit. Section 79's availability is not enough to answer a Section 78 timing objection; equally, Section 78's reasoned exception must be examined rather than omitted.

For Section 16(5), establish the invoice or debit-note financial year, the actual Section 39 return-filing date and all other disputed credit conditions. The statutory relaxation is confined to the stated years and deadline. Keep the appellate remand alive instead of treating the refund as a final cancellation of the underlying liability.

Do not treat this decision as a general right to refund every tax payment or credit reversal affected by the retrospective amendment. Finance (No. 2) Act 2024 Section 150 and CBIC's pre-deposit clarification require separate analysis. This judgment does not discuss Section 150 or hold that every coercively recovered sum falls outside it. Its refund rests expressly on the independent unlawful-recovery finding. Preserve both judicial interest directions and obtain clarification if an actual calculation dispute arises. Current Tribunal availability, deposit requirements and filing deadlines need a fresh case-specific check.

Pinpoint: AKHB commentary based on paragraphs 10–15, 21–33 and the separately identified statutory sources; distinct from the Court's holdings.

Sources and limitations

Relevant provisions

CGST/BGST Acts 2017: Sections 16(4), 16(5), 39, 73(5), 78, 79 and 112; Section 107 pre-deposit context. Finance (No. 2) Act 2024 Sections 118 and 150 are supplementary statutory checks, not issues expressly adjudicated in this judgment.

Statutory note

Checked 13 October 2026. Official CBIC Circular 237/31/2024-GST identifies the retrospective insertion of Section 16(5) from 1 July 2017, the financial years 2017-18 to 2020-21 and the 30 November 2021 return deadline. It reproduces Finance (No. 2) Act 2024 Section 150: the retrospective relaxation does not by itself generate refunds of tax paid or credit reversed. Its 25 October 2024 corrigendum excludes qualifying appellate pre-deposits from that restriction where the appeal succeeds. Neither circular establishes that every garnishee recovery is such a pre-deposit. Notification 17/2024-Central Tax addresses commencement; the official Council copy was read, but the direct file download timed out. These 2024 instruments post-date the 2023 recovery but pre-date this judgment.

The official historical Bihar Gazette verifies Sections 78–79 and their written-reasons proviso. India Code's CGST compilation as at 11 June 2026 confirms the pertinent recovery framework and Section 16(5). It also records the Central Section 112(8)(b) reduction from an additional 20% to 10% of disputed tax, capped at Rs. 20 crore, effective 1 November 2024, and the retained deemed stay under Section 112(9). The judgment's references to 20% concern earlier litigation and must not be presented as current advice. Central amendments do not establish identical Bihar commencement. The located current Bihar compilation could not be read because its endpoints failed or timed out; present Bihar amendment and refund-transition details remain a specific verification limit.

Treatment note

Checked 13 October 2026. Bounded searches used the party name, CWJC 17860/2024, decision date and review, stay, appeal, Supreme Court and later-year terms, including Patna High Court and Supreme Court domains. They did not verify a direct later stay, reversal or review modification. This is not an exhaustive registry or citator clearance. Sita Pandey is an earlier authority expressly followed here; its different retained-deposit and costs directions do not modify this judgment's full-refund order. Compliance with the repayment or remand directions was not established.

Fresh downloads succeeded from both the ILR endpoint and the Court's eighteen-page judgment endpoint. The twenty-page ILR re-download has a different file hash but an exactly matching complete extracted text; its PDF modification metadata is newly generated. The separate eighteen-page official judgment text exactly matches physical pages 3–20 of the retained original. No fresh merits variation was established; original bytes were preserved.

Scope of source review

All twenty original physical pages were fully read and individually visually inspected, including the two reporter-prepared pages, statutory extracts, nested case quotations and signatures. Supplementary legislation was checked only at the identified provisions. The assessment, appellate file, recovery notices, contract bill, affidavit, payment records and post-remand order were not independently obtained.

Source notes

Physical pages 1–2 are editorial material, not the Court's reasons; physical pages 3–20 correspond to Court pages 1–18. The signed oral judgment is dated 1 May 2025 and the footer records upload on 2 May 2025. No neutral or reporter citation for this judgment is verified on the retained original. Paragraph 32's approximate elapsed-time description is not used for interest arithmetic. The 6% and default 12% directions are reproduced separately without supplying an unstated interaction. Cryptographic signature validation is not claimed.

Primary source

Source description: Complete retained official Patna High Court ILR PDF, comprising two editorial pages and the eighteen-page oral judgment; fresh official copies checked on 13 October 2026.

Official source: [Open source document](#)

Source pages: 20

Judgment author: Hon'ble Mr. Justice Rajeev Ranjan Prasad

Outcome type: final recovery refund ruling with itc remand

Additional source

Patna High Court eighteen-page judgment copy

Official source: [Open source document](#)

Pinpoint: Complete extracted text matches retained original physical pp. 3–20; downloaded 13 October 2026.

CBIC Circular 237/31/2024-GST dated 15 October 2024

Official source: [Open source document](#)

Pinpoint: Paragraphs 1–1.3, 3.3 and 4, pp. 1–3 and 6; retrospective relief and Section 150 restriction.

CBIC corrigendum dated 25 October 2024

Official source: [Open source document](#)

Pinpoint: Single page; qualifying pre-deposit exception to Circular 237 paragraph 4.

Notification 17/2024-Central Tax dated 27 September 2024

Official source: [Open source document](#)

Pinpoint: Single page, clauses (a)–(b); official web-extracted text read 13 October 2026.

Bihar Goods and Services Tax Act 2017, official Gazette

Official source: [Open source document](#)

Pinpoint: Physical pp. 54–55, printed pp. 192–193: Sections 78 and 79(1)(c); historical text.

CGST Act, India Code compilation as at 11 June 2026

Official source: [Open source document](#)

Pinpoint: Physical p. 31, pp. 73–74 and 92–94: Sections 16(5), 78–79 and 112; targeted Central-law check, 13 October 2026.

Disclosures and source rights

AI disclosure: Prepared with AI assistance from the complete retained official judgment and the identified primary statutory material. No human legal review is claimed.

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