



**HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW  
WRIT - C No. - 29277 of 2016**

Instakart Services Pvt. Ltd. Thru. Its Authorised Signatory

.....Petitioner(s)

Versus

State Of U.P. Thru Special Secy. Institutional Finance And Ors

.....Respondent(s)

Counsel for Petitioner(s) : Saurabh Lavania, Anupam Mishra,  
Kishore Kunal

Counsel for Respondent(s) : C.S.C.

**Along with :**

**1. Writ - C No. 15803 of 2021:**

Instakart Services Pvt. Ltd. Thru Authorized Signatory

Versus

State of U.p.thru Adl.chief Secy.institutional Finance Andors.

**2. Writ Tax No. 297 of 2024:**

Instakart Services Pvt. Ltd. Thru. Authorized Signatory Debasish Kundu

Versus

State of U.P. Thru. Addl. Chief Secy. Institutional Finance Lko. and 2 others

**Court No. - 2**

**HON'BLE MRS. SANGEETA CHANDRA, J.  
HON'BLE SYED QAMAR HASAN RIZVI, J.**

1. We have heard Sri Tarun Gulati, learned Senior Advocate assisted by Sri Anupam Mishra, learned counsel for the petitioner and Sri Siddharth Dhawan, learned Additional Chief Standing Counsel for the State Respondents.

2. Learned counsel for the petitioner has pointed out the order dated 13.12.2016 passed by this Court in this writ petition. After taking into account an order passed on 27.09.2016 by a Division Bench of Patna High Court in a Writ Petition filed before it by the petitioner regarding imposition of Entry Tax by way of Amendment Act of 2016 on online transactions/E-commerce. The Court was also apprised that the Uttarakhand High Court in Writ Petition No. 432 of 2016 has passed an interim order on 16.03.2016.

3. Sri Tarun Gulati, learned Senior Advocate has also pointed out the detailed order passed by this Court on 19.12.2016 wherein the arguments

made by learned counsel appearing for the State Respondents were noted, and also the judgement rendered by the Hon'ble Supreme Court in the case of *Health For Millions Vs. Union of India and Others: (2014) 14 SCC 496*. The Court noted the interim order granted by the Uttarakhand High Court in Writ Petition No. 432 of 2016 by its order dated 16.03.2016. Taking into account the arguments made on behalf of the counsel for the petitioner and also on behalf of the State Respondents, the Court had expressed its *prima facie* satisfaction that the amendment inserted by way of U.P. Act No. 18 of 2016 was completely beyond the authority and legislative competence of the State Legislature as it introduced levy of tax which was not existing under the old Act, and therefore, could not have been introduced by way of amendment. The Court also expressed the opinion that Clause-19 of the Constitution (One Hundred and First Amendment) Act, 2016 did not in any way *prima facie* save the imposition of tax on E-Commerce or online purchase particularly for personal use. Having observed that there is a complete lack of legislative competence which rendered the impugned provisions unconstitutional, the Court has observed that it is a fit case for grant of an interim relief and had directed the petitioner to furnish bank guarantee to the satisfaction of the State Authority concerned by mentioning in the form prescribed for the said purpose, in respect of such transactions, and had also directed the State Respondents to file a counter affidavit in the matter.

4. The Court had also observed that since the writ petition related to realization of the revenue by the State, the matter shall be considered and disposed of at the earliest by this Court.

5. It has been submitted that in compliance of such orders passed by this Court several bank guarantees have been filed for respective years 2016-17 and 2017-18 as the Court had observed that the liability that will arise out of final decision in this writ petition may not work out in favour of the State revenue. In the meantime, therefore, the petitioner had submitted several bank guarantees for the respective years. The writ petition has remained pending for the past nine years. Bank guarantees have been given and more than 19 crores rupees bank guarantees are with the respondents. In the recent past, however, the department has invoked bank guarantees given for the 2 years i.e. financial year 2016-17 & 2017-18. Now, the G.S.T. Act has come into force and it takes care of such online purchase and E-Commerce also.

6. It has been submitted that a contempt petition has also been moved by the petitioner for alleged non-compliance of this Court's Order dated 19.12.2016, which was listed today and notices have been issued to the respondents/alleged contemnors.

7. It has also been submitted that bank guarantees could not have been invoked unilaterally, and therefore, an application for further interim relief was filed on 19.11.2025.

8. Since, no order could be granted on such application and the bank guarantees were invoked in the meantime by the Department, a supplementary affidavit served upon the respondents on 29.11.2025 and the Court may take in on record.

9. We are of the opinion that such affidavit, if any, which the petitioner has served upon the Office of the Chief Standing Counsel on 29.11.2025, be filed in the Registry so that it is properly numbered and tagged with the file.

10. Insofar as this Court's Order dated 25.11.2025 is concerned, the counsel for the respondents Sri Siddharth Dhawan, Additional Chief Standing Counsel has requested for an adjournment as he says that learned Advocate General has not been yet provided a copy of the record of this Writ Petition/paper book, and therefore, he is unable to assist today.

11. It is strange that Writ-C No. 29277 of 2016 having been filed nine years ago and challenging the *vires* of the State Amendment carried out in 2016 and having an interim order therein; the State has not requested the learned Advocate General to appear for the past several years. He has been requested only now in November, 2025 to appear in the matter and the State has been careless enough not to provide the record of the writ petition/paper book to the learned Advocate General. No Nodal Officer has been appointed to remain in constant touch with the Office of the Chief Standing Counsel with regard to subsequent applications being filed and current instructions being given by the Department. It is a very sorry state of affairs insofar as conduct of State litigation is concerned. There are hundreds of State Counsels on the panel in civil side only in Lucknow, what to say of such counsels in huge numbers being available at Allahabad.

12. It is also a matter of concern that the learned Advocate General did not think it fit and proper to appear through Video Conferencing as directed by

this Court earlier, and request for an adjournment which we would have certainly granted to him looking at the fact that it would have been his maiden appearance before this Court.

13. We are pained that the attitude of the State Government and the Officials of the concerned Departments.

14. Since we have been informed that the bank guarantees have been invoked by Sri Uma Shanker Vishkarma, Deputy Commissioner(Assessment), Sector-13 Lucknow/ respondent no.2, he may file his personal affidavit before this Court explaining the circumstances which prompted him to invoke the bank guarantees by the next date of listing.

15. The Special Secretary, Institutional Finance, Government of U.P., Lucknow/opposite party no.1 shall also file an affidavit indicating as to when exactly the State had requested the learned Advocate General to appear in the matter and as to why the paper book was not given to the learned Advocate General in time and why no Competent Officer was appointed as Nodal Officer to brief him by visiting his Office/residence at Delhi.

16. List this case on 08.01.2026 at 02:15 P.M.

17. Till the next date of listing, the Status Quo be maintained with respect to demand raised for the financial year 2016-17 & 2017-18.

**December 1, 2025**  
Darpan Sharma

**(Syed Qamar Hasan Rizvi,J.) (Mrs. Sangeeta Chandra,J.)**