

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(T) No. 1617 of 2023

Rajeev Kumar

..... Petitioner

Versus

1. The Principal Commissioner of Central Goods and Service Tax, having its office at 5A Central Revenue Building, Main Road, Ranchi.
2. The Additional Commissioner of Central GST & CX, Sub-Commissioner, having its office at 5A Central Revenue Building, Main Road, Ranchi.

.....Respondents

CORAM: Hon'ble Mr. Justice Rongon Mukhopadhyay
Hon'ble Mr. Justice Deepak Roshan

For the Petitioner	: Mr. Ajay Kumar Rastogi, Adv. Mr. Mahendra Kr. Choudhary, Adv. Mr. Parijat Saurav, Adv.
For the Res. Resp.	: Mr. P.A.S.Pati, Adv. Ms. Ranjana Mukherjee, Adv.

CAV on :-01.09.2023

Pronounced on:-12/09/2023

Per Deepak Roshan, J.

The instant application has been preferred

for the following reliefs:-

- (i) *For issuance of a writ in the nature of certiorari or any other appropriate writ or direction for setting aside the Order-in-Original No.20/S.Tax/ADC/RAN/2023 dated 07.02.2023 (Annexure-5), passed by the Additional Commissioner, GST and CX, Sub-Commissionerate, Ranchi, wherein the said adjudicating authority in complete violation of principle of natural justice and without considering the reply of the petitioner submitted on 13.09.2021 (Annexure-2 series) and even without taking into account the same, in a quite mechanical and stereo type manner confirmed the demand as made in the alleged Demand-cum-Notice to show cause dated 24.09.2021(Annexure-3).*
- (ii) *For quashing and setting aside the demand-cum-notice to show cause dated 24.09.2021 (Annexure-3) issued by the Respondent No.2, whereby and whereunder the said show cause the petitioner as to why the service tax including interest and penalties, as mentioned therein, should not be imposed upon the petitioner, for the financial year 2016-17.*
- (iii) *For a direction upon the adjudicating authority to pass a fresh order, after taking into account the submissions made and documents submitted by the petitioner vide e-mail dated 13.09.2021 (Annexure-2 series).*

2. The brief fact of the case is that the petitioner is a proprietorship firm and is engaged in business of civil contract work and is providing civil construction contractor work to the government offices in the State of Jharkhand and Bihar. During the period 2016-17, the petitioner executed various work with regard to the construction, repair, maintenance and road.

The claim of the petitioner is that no service tax is payable in view of the Sl. No.13 of notification No.25/2012-ST dated 20.06.2012. The further case of the petitioner is that in the month of September, 2021 he received a call from the office of respondent No.2 to inform that an investigation by the department has been initiated in the case of the petitioner regarding allegation of non-registration under service tax and non-payment of service tax for the Financial Year 2016-17.

As per the petitioner it was also informed that several notices have been issued i.e., on 24.06.2021, 26.07.2021 and 02.08.2021, however due to COVID restriction, the petitioner in reply to notice dated 02.08.2021 through e-mail dated 13.09.2021 sent his written submission with supporting documents to the office of the respondent No.2.

Thereafter, demand-cum-show cause notice was issued on 24.09.2021 which was sent through e-mail to the petitioner. The petitioner immediately contacted through phone and informed that reply to the allegation in the Show Cause Notice (hereinafter referred to as "SCN") dated 24.09.2021 was already replied by the petitioner.

Subsequently, after a long gap, all of a sudden respondent no.2 issued date of personal hearing fixing the date on 04.01.2023 but the petitioner could not check his

e-mail on time as he was not in habit to check e-mail daily and could not attend the date of hearing. Ultimately the impugned Order in Original (OIO) was passed.

3. Learned counsel for the petitioner submits that the respondent no.2 has erred in not considering the reply and the documents of the petitioner already submitted on 13.09.2021 (Annexure-2, 2/1, 2/2) in reply to the allegation in respect of which the impugned OIO dated 07.02.2023 (Annexure-5) has been passed.

He further contended that due to noncompliance of principles of natural justice, the instant writ application is maintainable and further referred to several judgments like *Anil Kumar Vs. Presiding Officer*, reported in (1985) 3 SCC 378 and also the judgment of *Whirlpool Corporation Vs. Registrar of Trade Marks* reported in (1998) 8 SCC 1 and *ABL International Ltd. Vs. Export Credit Corporation*, reported in (2204) 3 SCC 55. The petitioner also tried to argue on merits of the case.

4. Learned counsel for the respondents raised a preliminary objection with regard to the maintainability of the writ application on the ground of alternative remedy. He further submits that the petitioner was given ample opportunity but he has not filed reply to the Show Cause Notice (hereinafter referred to as "SCN") or attend the personal hearing intimated to him. As such, the grievances of the petitioner that principle of natural justice is not complied in the instant case is liable to be rejected and since the petitioner is having alternative remedy under the Act, the instant writ application should be dismissed.

5. Having heard learned counsel for the parties and after going through the averments made in the respective affidavits and the documents annexed therein and also the impugned Order-in-Original, it transpires that no reply to

the “SCN” was ever submitted by the petitioner. Even the date of personal hearing was fixed four times i.e., on 27.10.2022, 25.11.2022, 07.12.2022 and 04.01.2023, however, the petitioner did not respond to the same.

The petitioner referred Annexure-2, 2/1 and 2/2 that he has replied to the notice as such the same should have been considered as reply to SCN but after perusing the said Annexure it appears that the said reply was given at the stage of enquiry. From bare perusal it appears that the same was sent to the Superintendent, Range-1, Div-II, Bokaro; however, those were pre SCN queries made by the Range Officer but, admittedly; the petitioner did not reply to the SCN.

6. It is further evident that the Assessee was given ample opportunity to appear before the adjudicating authority but he failed to do so. The letters of personal hearing were issued to him on the address “*M/s Rajeev Kumar, Lukiya Petarwar, Bokaro Steel City, 827001*” provided by petitioner-assessee in their GST registration but the letters were returned undelivered. It further transpires that the letters were also sent to the assessee through e-mail ID i.e. rajeevkumar020180@gamil.com which was available to the department but the Assessee did not respond to the said letters. Thus, the contention of the Assessee that principle of natural justice has not been complied is misplaced and misconceived and without any basis. As a matter of fact, in para-9 and 10 of the impugned Order-in-Original, the adjudicating authority has clearly stated giving details of opportunity provided to the Assessee. As such the contention of non-fulfillment of natural justice is not sustainable in the background of this case.

The case laws relied upon by the petitioner is also

not applicable for the sole reason that admittedly after issuance of SCN the petitioner did not respond to the SCN and even did not appear on any of the date of personal hearing fixed by the department i.e., 27.10.2022, 25.11.2022, 07.11.2022 and 04.01.2023.

7. Accordingly, we are of the considered opinion that no error has been committed by the adjudicating authority in passing the impugned Order-in-Original, inasmuch as, enough opportunities were provided to the petitioner by issuing SCN and also fixing date of personal hearing for four times; but the petitioner did not respond to either of them.

8. Having regard to the aforesaid discussions and admitted position with regard to non-submission of reply to the SCN, we failed to appreciate the contention of the petitioner that principle of natural justice has not been complied in the instant case. Since there is efficacious alternative remedy provided in the Act itself, we hold that the instant writ application is not maintainable.

9. As a result, the instant application stands dismissed. Pending I.A., if any, is also closed.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)