

IN THE HIGH COURT OF JHARKHAND AT RANCHI  
W.P (T) No. 3402 of 2020

M/s Sri Ram Construction, a Proprietorship concern, Ranchi through  
Its proprietor Sanjay Kumar --- --- Petitioner

Versus

1. The Union of India through its Principal Commissioner,  
Central Goods & Services Tax and Central Excise, Ranchi
2. Deputy Commissioner, Ranchi South Division,  
Central Goods & Services Tax and Central Excise, Ranchi
3. Superintendent, Central Goods & Services Tax and Central Excise,  
Range-I, Ranchi South Division, Ranchi --- --- Respondents

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CORAM: **Hon'ble Mr. Justice Aparesh Kumar Singh**  
**Hon'ble Mr. Justice Deepak Roshan**

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For the Petitioner: M/s Sumeet Gadodia, Ranjeet Kushwaha, Aanya, Advocate  
For the Resp.-CGST: Mr. Amit Kumar, Advocate

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18 / 09.06.2022 Heard learned counsel for the parties.

2. Writ petition was preferred for the following relief (s).
  - i. For issuance of an appropriate writ/order/direction for quashing/setting aside the Notice dated 24.07.2020 (Annexure-8) issued under Section 79 of the Central Goods & Services Tax Act, 2017 (hereinafter referred to as 'CGST Act' for short) by Respondent No.2, wherein without carrying out any adjudication process either under Section 73 or 74 of the CGST Act, garnishee notice has been issued to the Petitioner's Bankers for alleged recovery of Government dues amounting to Rs. 4,28,86,464/-.
  - ii. For issuance of further appropriate writ/order/direction including Writ of Declaration, declaring that determination of the alleged dues towards Central Goods and Services Tax pertaining to the period July, 2017 to March, 2019 amounting to Rs. 4,28,86,464/- only on the basis of GSTR-1 Statement, without giving the benefit of Input Tax Credit (for short ITC) admissible to the Petitioner, as claimed by it in GSTR-3B Statement, is wholly arbitrary, illegal and contrary to the scheme of the CGST Act.
  - iii. For issuance of further appropriate writ/order/direction, including Writ of Mandamus, directing the Respondents, particularly Respondent No. 2, to take an informed decision for recalling of the garnishee order contained in Notice dated 24.07.2020 (Annexure-8) issued under Section 79 of the CGST Act and to fix reasonable installments for payment of the admitted tax due amount of Rs. 1,14,93,646.91, keeping in view all mitigating factors pertaining to the Petitioner including its financial condition and the widespread COVID-19 virus in the country.
  - iv. For issuance of any other appropriate writ(s), order(s), and/ or direction(s), as Your Lordships may deem fit and proper in the facts and circumstances of this case in the interest of justice.

3. Upon hearing the learned counsel for the parties, vide order dated 21.01.2021, interim relief was granted in favour of the petitioner on deposit of amount of Rs. 20.00 lakhs within a period of ten days. An affidavit showing deposit of the amount of Rs. 20.00 lakhs was filed and taken note of in the order

dated 03.02.2021, For easy reference, order dated 21.01.2021 is extracted hereunder:

“Learned counsel for the petitioner Mr. Sumeet Gadodia assisted by Mr. Satyam Parmar submits that notice under Section 79 of the CGST Act, 2017 has been issued by respondent No. 2 for alleged recovery of government dues amounting to Rs. 4,28,86,464/- on 24.07.2020 (Annexure-8) upon petitioner’s banker United Bank of India without any adjudication process under Section 73 and 74 of the Act. The alleged dues relate to Central Goods and Services Tax, pertaining to the period of July, 2017 to March, 2019 but has been computed only on the basis of one GSTR-1 statement without giving benefit of input tax credit admissible to the petitioner as claimed through GSTR-3B statement.

Petitioner has a credit of ITC to the tune of Rs. 3,04,15,359/-. Petitioner admits tax liability of Rs. 1,14,53,646.91/-. Petitioner’s admitted amount has been withheld by one MC Nally Bharat Engineering Company 2 Ltd. to the tune of Rs. 5,48,45,307/- even after successful completion of the work awarded to the petitioner. Therefore, petitioner approached NCLT, Kolkata under Section 9 of the Insolvency and Bankruptcy Code, 2016, which however was dismissed on 04.03.2020. Petitioner’s appeal is pending before the NCLAT and has been admitted on 09.10.2020. Petitioner has also made representation vide Annexure-14 to the respondent Deputy Commissioner, South Division, Ranchi, in reply to the garnishee order passed under Section 79 of the Act bringing all these facts into his notice. Without any adjudication, the claim of ITC to the tune of Rs. 3.04 Crores cannot be denied. Learned counsel for the petitioner has also referred to CBIC circular at Annexure-15 dated 03.04.2020 which is to the following effect:

“G.S.R.....(E)-In exercise of the powers conferred by section 168A of the Central Goods and Services Act, 2017 (12 of 2017) (hereafter in this notification referred to as the said Act), read with section 20 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), and section 21 of Union Territory Goods and Services Tax Act, 2017 (14 of 2017), in view of the spread of pandemic COVID-19 across many countries of the world including India, the Government , on the recommendations of the Council, hereby notifies, as under,-

(i) where, any time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall be extended up to 30th day of June, 2020, including for the purposes of-

(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the Acts stated above, or

(b) filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other

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record, by whatever name called, under 3 the provisions of the Acts stated above. but, such extension of time shall not be applicable for the compliances of the provisions of the said Act, as mentioned below-

(a)Chapter V,

(b)Sub-section (3) of section 10, section 25, 27, 31, 37,47,50,69,90,122,129;

(c) Section 39, except sub-section (3), (4) and (5).

(d)Section 68, in so far as e-way bill is concerned; and

(e)rules made under the provisions specified at clause (a) to (d) above.

(ii) where an e-way bill has been generated under rule 138 of the Central Goods and Services Tax Rules, 2017 and its period of validity expires during the period 20th day of March, 2020 to 15th day of April, 2020 the validity period of such e-way bill shall be deemed to have been extended till the 30th day of April, 2020. 2. This notification shall come into force with effect from the 20th day of March, 2020.”

2. Time limit for completion or compliances has been extended further up to 30.11.2020 vide CBIC Circular dated 01.09.2020 at page 259. Petitioner on his own bonafide has deposited Rs. 15 lacs towards aforesaid tax dues. However, due to Covid-19 situation and on account of the garnishee notice, his business is at a stand still.

3. It is submitted that respondents were allowed short time to be ready with instructions by order dated 12.01.2021 on the interim prayer, but no categorical instructions have come forth in this regard or any affidavit has been filed. Petitioner is ready to pay the tax liability of Rs. 1.14 Crores in reasonable instalments pending any adjudication on the denial of his claim of ITC of 3.04 Crores. However, unilaterally such a claim of ITC cannot be denied. Petitioner further undertakes to deposit Rs. 15 lacs within ten days. He submits that the impugned notice may be stayed till filing of the counter affidavit so that the petitioner may not continue to suffer.

4. Learned counsel for the respondent CGST Mr. Amit Kumar submits that statement of facts have been received, but he would require one week time to file counter affidavit. Learned counsel for the respondent has however has not been able to reply to the specific contention of the petitioner as to how despite the CBIC Circular dated 03.04.2020 and its extension by circular dated 01.09.2020 such notice has been issued.

5. As prayed for, one week time is allowed to the learned counsel for the respondents to file counter affidavit. Matter be listed on 03.02.2021. Affidavit be filed latest by 29.01.2021 with advance copy to the learned counsel for the petitioner.

6. If petitioner deposits an amount of Rs. 20 lacs within a period of ten days from today, no coercive steps be taken against the petitioner pursuant to the notice dated 24.07.2020 (Annexure-8) till the next date.

7. Learned counsel for the petitioner may also file rejoinder, if any thereto, well in advance before the next date.

4. Meanwhile, two separate adjudication orders were passed in respect of the subject matter of the dispute in the writ petition being Order No. 07/GST/RSD/2021-22 dated 09.02.2022 and Order No. 08/GST/RSD/2021-22 dated 16.02.2022. Petitioner has filed two appeals and deposited 10% of the

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amount of demand in terms of section 107 of CGST Act, 2017. Statement to that effect has been made at para-6 of the supplementary affidavit dated 08.06.2022. Appeals are numbered as CGST (A)-21/RAN/22-23 and CGST (A)-26/RAN/22-23. On deposit of 10% of the amount of demand in terms of section 107 Sub-section (6) & (7) of CGST Act, 2017, recovery of the balance amount is deemed to have been stayed.

5. Learned counsel for the petitioner submits that upon disposal of the appeal, in case adjudication order is upheld or even modified, a fresh demand has to be raised in Form GST APL-04. Learned counsel therefore, submits that the impugned Garnishee notice has become infructuous and it cannot be given effect to in view of stay operating at the appellate stage. Therefore, the writ petition may be disposed of by holding as such.

6. Learned counsel for the Respondent CGST Mr. Amit Kumar does not dispute that upon filing of appeal and deposit of 10% of the disputed tax amount, recovery of any balance amount shall remain stayed till the appeal is decided. He also does not dispute that in such an event, Garnishee notice arising out of the adjudication order cannot be given effect to. Dependent upon the outcome of the appeal, a fresh demand shall have to be raised in the prescribed format and in case the Assessee fails to pay the amount within the stipulated time, steps for recovery through special mode can also be made.

7. We have taken note of the original cause of action raised by the writ petitioner also the subsequent development brought on record through the supplementary affidavit filed on 08.06.2022. Upon deposit of 10% of the disputed tax amount during pendency of two appeals preferred by the petitioner, recovery of any remaining balance is deemed to have to been stayed in view of Section 107 Sub-section (6) and (7) of CGST Act, 2017. The impugned Garnishee proceeding therefore, cannot be given effect to and in fact has become infructuous. Any fresh demand arising out of the decision of the Appellate Authority can be realized by issuance of GST APL-04. As such, there is no purpose in keeping the writ petition pending. It is disposed of as infructuous.

**(Aparesh Kumar Singh, J)**

**(Deepak Roshan, J)**