

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 391 of 2023

Date of Order: 11.12.2023

M/s Jorabat Shillong Expressway Limited Vs. Union of India & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Chief Justice (Acting)
Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner(s) : Mr. S. Ghosh, Adv.
Ms. M. Waraich, Adv.
Ms. A. Agarwal, Adv.
Mr. Philemon Nongbri, Adv.

For the Respondent(s) Dr. N. Mozika, DSG with
Ms. S. Rumthao, Adv.

- i) Whether approved for reporting in Law journals etc: Yes/No
- ii) Whether approved for publication in press: Yes/No

JUDGMENT AND ORDER (ORAL)

Per. H.S. Thangkhiew, Chief Justice (Acting):

1. The writ petitioner by way of the instant writ petition is assailing the Demand cum Show Cause Notice bearing reference No. DGGI/INV/91/2021-0/o DD-DGGI-RU-Shillong/941, and DIN No.

202309DEE3000000AO6F, dated 30.09.2023, which has been issued by the respondent No. 4 under Section 74 of the Central Goods and Services Tax Act, 2017 (“CGST Act”) and Section 74 of the Meghalaya Goods and Services Tax Act, 2017 (“MGST Act”).

2. The challenge has been made on the ground that the said show cause notice is illegal and without jurisdiction, inasmuch as, the demand for GST on the annuity received by the petitioner from the National Highway Authority of India has been made in contradiction and violation of an exemption to annuity granted vide notifications dated 28.06.2017, 13.10.2017, 29.06.2017 and 09.11.2017.

3. Further challenge has also been made to a circular dated 17.06.2021 issued by the respondent No. 3, as well as the recommendation of the respondent No. 6 in the 43rd GST Council Meeting held on 28.05.2021. The circular has been impugned, inasmuch, as the same is based on the Memorandum of recommendation dated 28.05.2021, which had clarified that Entry 23A of the exemption notification does not exempt GST on annuity paid for construction of roads, which in turn was the basis on which the impugned show cause notice dated 30.09.2023 had been issued by the respondent No. 4.

4. It has been contended by the counsel for the petitioner that in spite the demand being unjustified and against the very grain of the

exemption notification, the respondents have by the show cause notice demonstrated their stand as to the issue in question. Attention of this Court has been drawn to a communication dated 19.01.2021 addressed to the Senior Intelligence Officer, DGGI, Shillong Region Unit, which was made in response to a summons under Section 70 of the CGST Act, wherein the petitioner had elaborated the decision of the Council to exempt annuity from tax. The impugned show cause notice 30.09.2023, it is submitted is therefore misplaced and uncalled for.

5. The learned counsel has further argued that the filing of a response to the impugned show cause notice in view of the firm stand taken by the respondents, will be but a futile exercise with the outcome having already been determined by the respondents. It has been further submitted that the Karnataka High Court in the case of ***DPJ Bidar-Chincholi (Annuity) Road Project Pvt. Ltd. vs. Union of India*** by a judgment dated 11.07.2022 has held that the impugned circular dated 17.06.2021, to be bad in law and that the same had been set aside. As such, he submits to relegate the petitioner to undergo proceedings before the respondents would be of no consequence, and that in view of the circumstances as they pertain, interference of this Court is called for to set aside and quash the impugned circular, as well as the show cause notice dated 30.09.2023.

6. Dr. N. Mozika, learned DSG assisted by Ms. S. Rumthao, learned counsel for the respondents in his short submission, has argued that notwithstanding the prevalent situation or circumstances, especially the fact that the impugned circular has since been set aside by the Karnataka High Court, a ruling which the respondents are bound to take consideration, the issue has not been predetermined, or an inflexible stand taken as regards to the impugned circular, to not warrant a response to the impugned show cause notice. He therefore submits that the matter being still yet to be decided, the writ petition is premature, and not liable to be entertained by this Court, at this stage.

7. Considering the submissions made by the parties, and on perusal of the materials as placed before this Court, it is seen that the writ petitioner has come against a show cause notice issued under Section 74 (1) of the CGST Act, 2017 read with the corresponding Section of the Meghalaya State GST Act, 2017, wherein the petitioner was to show cause within 30 days as to why the stated amount of GST allegedly short paid on the annuity payment received, along with interest and penalty be not realized from it.

8. The petitioner it appears instead of responding to the show cause have chosen to assail the same as has been discussed above. No doubt the writ petition cannot be said to be devoid of merit, but at this stage

wherein final orders are yet to be passed by the respondents in the matter, and further with the submissions of the respondents that the matter is yet to be considered finally, this Court at this stage without further going into the merits, is not inclined to entertain the instant writ petition.

9. In the circumstances therefore, this writ petition being premature, the same is disposed of with the direction that the petitioner first pursues and participates in the proceedings initiated vide the impugned show cause notice, by responding to the same and placing the facts and materials which have been placed before this Court. It is further provided that as the period for replying to the show cause was 30 days from its issuance, which has elapsed, it is directed that the respondents will accept the response/reply to the impugned show cause and consider the same in accordance with law, if the same is presented within 30 days from the date of this order.

10. As ordered, the matter accordingly stands closed and disposed of.

11. No order as to costs.

(B. Bhattacharjee)
Judge

(H.S. Thangkhiew)
Chief Justice (Acting)

Meghalaya
11.12.2023
"V. Lyndem PS"