

GAHC010198862022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6549/2022

BINDU BHUSAN BANIK
PROPRITOR OF M/S BINDU BHUSAN BANIK, MISSION PARA, P.O.-DIGBOI,
PIN-786171, DIST-TINSUKIA, ASSAM

VERSUS

THE UNON OF INDIA AND 5 ORS
THE SECRETARY, MINISTRY OF FINANCE DEPARTMENT OF REVENUE,
CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS, NORTH BLOCK,
NEW DELHI-110001

2:THE PRINCIPAL COMMISSIONER
CENTRAL GST
HQRS
GUWAHATI
GST BHAWAN
KEDAR ROAD
MACHKHOWA
GUWAHATI-781001
ASSAM

3:JOINT COMMISSIONER
CENTRAL GOODS AND SERVICE TAX
OFFICE OF THE COMMISSIONER OF CENTRAL GOODS AND SERVICES
TAX
MILAN NAGAR F LANE
P.O.-C.R. BUILDING
DIBRUGARH-786003

4:THE ASSISTANT COMMISSIONER
CENTRAL GOODS AND SERVICES TAX
OFFICE OF THE DEPUTY COMMISSIONER OF CENTRAL TAX

CENTRAL GOODS AND SERVICES TAX
TINSUKIA DIVISION
DURGABARI ROAD
P.O.-TINSUKIA-786123

5:THE SUPERINTENDENT (A/E)
OFFICE OF THE ASSISTANT COMMISSIONER OF CENTRAL GOODS AND
SERVICE TAX
TINSUKIA DIVISION
DURGABARI ROAD
P.O.-TINSUKIA
PIN-786125

6:THE SUPERINTENDENT
OFFICE OF THE SUPERINTENDENT OF CENTRAL TAX
CENTRAL GOODS AND SERVICES TAX
DIGBOI RANGE
TINSUKIA
PIN-78617

Advocate for the Petitioner : MS S PRASAD

Advocate for the Respondent : ASSTT.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 26.06.2023

Heard Ms. P. Dasgupta, learned counsel appearing on behalf of Mr. S. Prasad, learned counsel for the petitioner. Also heard Mr. S. C. Keyal, learned Standing Counsel, GST department representing the respondents.

2. By filing this petition under Article 226 of the Constitution of India, the petitioner has challenged (i) the legality of the Demand-cum-show-cause Notice dated 11.02.2019 issued by the Assistant Commissioner, CGST, Tinsukia Division, (ii)

subsequent notice dated 24.09.2020 issued by the Superintendent (A/E) of CGST, Tinsukia Division, as well as (iii) notice for personal hearing dated 11.02.2022, issued by the Superintendent of CGST, Digboi Range, Tinsukia.

3. In brief, the case of the petitioner is that he is the sole Proprietor of M/s Bindu Bhusan Banik, which is a registered contractor, involved in executing Works Contract having Service Tax registration No. ACNPB3990RST001.

4. By the impugned Demand-cum-show-cause notice dated 11.02.2019, demand of Rs.49,81,930.00/- (Rupees forty nine lakh eighty one thousand nine hundred and thirty only) was raised against the petitioner on the ground that the petitioner had failed to obtain Service Tax registration and had failed to submit periodical Service Tax Return (ST-3) from Financial Year 2013-14 to 2016-17 i.e., for a period from October, 2013 till to June, 2017.

5. On the ground that the no unpaid service tax dues is payable by the petitioner for the concerned period and on the ground that the 'Manpower Supply Services' , which is provided by the petitioner is included in the negative list of service tax vide Notification No.25/2012-ST dated 20.06.2012, it is submitted that the petitioner is exempted from paying any service tax in respect of the services rendered by them.

6. The learned counsel for the petitioner has submitted that at the time when the show-cause notice was served, COVID

Pandemic was prevailing in the Country. It is submitted that although show-cause reply was sent on 28th September, 2020 by speed post, the same was not considered and notice of personal hearing was issued and therefore, the present writ petition has been filed, as the action of the respondents is claimed to be arbitrary and that the action of the respondents in issuing the Demand cum show-cause notice was improper.

7. Having heard the learned counsel for the petitioner as well as the learned standing counsel for the respondents, even it is assumed that the condition of the petitioner is correct, yet a Court finds that the power to issue Show-Cause Notice is exercised by the authority as per statutory power conferred on the respondent authorities under Section 73 of the Finance Act, 1994. Therefore, although the petitioner may have a good defence, the same must be agitated before the concerned competent authority, who had issued the show-cause notice as the Court cannot hold that the show-cause notice was without jurisdiction.

8. The Court cannot presume that the respondent authorities would not consider the show-cause reply submitted by the petitioner or would not consider the argument advanced by the petitioner in the personal hearing.

9. Under such circumstances, this Court is of the considered opinion that it would be in the interest of justice that the petitioner be relegated to approach the adjudicating authority,

who had issued the show-cause notice.

10. In order to protect in the interest of the petitioner, it is provided that in the event the petitioner desires to file an additional show-cause reply, the competent authority shall permit the petitioner to do so and the respondent authority, while adjudicating the show cause notice, shall provide an opportunity of personal hearing to the petitioner, either physically or through on-line mode or through his authorized legal representative.

11. In view of the discussions above, the Court is inclined to close this writ petition by granting liberty to the petitioner to appear before the adjudicating authority i.e. the Assistant Commissioner, CGST, Tinsukia Division (respondent No.4) within 31.07.2023 with liberty to file additional show-cause reply, if so desired, and on such appearance of the petitioner, the respondent No.4 shall fix a date of personal hearing and grant an opportunity of hearing to the petitioner.

12. The petitioner is permitted to produce a certified copy of this order before the respondent no.4.

13. With liberty as indicated above, the writ petition stands disposed of.

JUDGE