

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPT No. 42 of 2020****Reserved on 19/02/2020****Delivered on 25/02/2020**

Dadhichi Iron And Steel Pvt. Ltd. A-17 And A-18, Transport Nagar, Bilaspur Road, Rawabhata, Near Banjari Mandir, Raipur Chhattisgarh. Through Its Branch Head Ms. Jyoti Sharma, D/o Shri Deepak Kumar Sharma, Aged About 28 Years, R/o A-19, Sector 1, Shankar Nagar, Raipur, District : Raipur, Chhattisgarh

---- Petitioner**Versus**

1. Chhattisgarh G S T Through Principal Commissioner, Commercial Tax GST Department, North Block, Sector 19, Atal Nagar, Raipur, District : Raipur, Chhattisgarh
2. Additional Director General Directorate General of Goods And Service Tax Intelligence, 3rd Floor, A/b Block, GST Bhawan, Tikrapara, Raipur, District : Raipur, Chhattisgarh
3. Joint Director, Directorate General of Goods And Service Tax Intelligence, 3rd Floor, A/b Block, GST Bhawan, Tikrapara, Raipur, District : Raipur, Chhattisgarh
4. Assistant Director, Directorate General of Goods And Service Tax Intelligence, 3rd Floor, A/b Block, GST Bhawan, Tikrapara, Raipur, District : Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Bishwa Ahluwalia, Advocate along with Mr. Rahul Tamaskar, Advocate
For State	:	Mr. Jitendra Pali, Dy. A.G.
For respective Respondents	:	Mr. Manish Sharma, Advocate

Hon'ble Shri Justice P. Sam Koshy**C.A. V. ORDER**

1. The present writ petition has been filed questioning the investigation initiated by the respondents and the summons issued in connection with the said investigation. The primary challenge to the investigation and the summons issued was a specific bar under the GST Act, 2017.

2. It would be relevant at this juncture to take note of the relief sought for by the petitioner:

“10.1 It is prayed that this Hon'ble Court may kindly be pleased to issue a writ in nature of Quo Warranto and/or any other appropriate writ requiring the respondents to show under what authority the impugned action of investigation and summon dated 3.2.2020 has commenced despite there being a specific bar in the CGST Act, 2017.

10.2 This Hon'ble Court may kindly be pleased to issue a writ in nature of mandamus and/or any other appropriate writ directing the respondents No.2 & 3 to provide copies of documents seized during the investigation so that appropriate representation may be made by the petitioner before the respondents in the interest of justice.

10.3 This Hon'ble Court may kindly be pleased to issue a writ in nature of mandamus and/or any other appropriate writ quashing the investigation proceedings commenced by the proper officer of the DGGSTI under CGST Act, 2017 and impugned summon dated 3.2.2020 against the petitioner holding the same to illegal.

10.4 This Hon'ble Court may kindly be pleased to issue a writ in nature of mandamus and/or any appropriate writ to direct the respondents to return forthwith the material, documents, electronics and personal effects of the Petitioner, Directors & Employees of the petitioner; and

10.5 This Hon'ble Court may kindly be pleased to issue a writ in nature of mandamus and/or any appropriate writ commanding/directing respondents to restrain from any coercive action against the petitioner during pendency of investigation if the same is held to be legal.

10.6 This Hon'ble Court may kindly be pleased to issue a writ in nature of mandamus and/or any appropriate writ commanding/directing respondents to follow the due process of law and issue appropriate notices and follow adjudication proceedings along with the principles of natural justice before any recovery of tax and/or prosecution may be done against the petitioner or its Directors/employees.”

3. If we peruse the relief nos. 10.2, 10.4 and 10.6 it would clearly reveal that the petitioner through this writ petition was ready to face the investigation provided the aforesaid relief sought in paragraph 10.2, 10.4 and 10.6 is complied with.
4. The brief facts which led to the filing of the present writ petition is that the petitioner is a registered company, registered under the Companies

Act, 1956. The said company is engaged in the business of trading of iron and steel items. The nature of business which the petitioner carries is that of purchasing goods from the steel manufacturers and sell the same to the different customers in different parts of the country. According to the counsel for the petitioner, the petitioner pays CGST/SGST/IGST on the goods purchased from the manufacturers and further pays CGST/SGST/IGST on the value of the supply of said goods made at the time of sale being made by the petitioner to other customers.

5. According to the counsel for the petitioner, the petitioner, therefore, was entitled for the Input Tax Credit on the GST paid on the goods and service purchased. According to the counsel for the petitioner, the respondents initially commenced an investigation against the petitioner on the allegation of the petitioner allegedly purchasing goods from bogus dealers and thereby issuing fake invoices and a notice in this regard was issued to the petitioner, based upon which subsequently the Input Tax Credit available to the petitioner was blocked and thereafter a proceeding was drawn in-respect-of the illegal availing of the Input Tax Credit. The said notice was subjected to challenge in WPT No. 130 of 2019. This court disposed-off the said writ petition directing the petitioner to file a detailed representation/objection to the concerned authorities under the department, who in turn was further directed to take-into-consideration the contents of the representation/objection and decide the same. According to the counsel for the petitioner, the respondent officers have already issued a show cause notice on 25.10.2019 proposing cancellation of registration

of the petitioner for the reasons of dealing in fake invoices. Subsequently, on 15.11.2019 the respondents had cancelled the registration of the petitioner.

6. Subsequently, the respondents again issued a show cause notice on 12.12.2019 proposing to cancel registration of the petitioner on the same allegations of issuance of fake invoices to which also even before the petitioner could response to the proceedings commenced, the respondents had vide order dated 28.08.2019 cancelled the registration of the petitioner.
7. The petitioner again applied for restoration of registration vide application dated 31.12.2019, which is still pending consideration before the concerned authorities. Meanwhile, the respondents issued a show cause notice dated 02.01.2020 proposing a tax demand of Rs. 11 crores for allegedly dealing with fake dealers and using of fake invoices. Since it was only a summary show cause notice, the petitioner immediately filed a representation on 03.01.2020 before the concerned officer requesting to provide the details of the show cause notice enabling the petitioner to effectively participate in the proceedings before taking any decision on the application filed by the petitioner. The respondents conducted a raid on the premises of the petitioner including the house of few employees of the petitioner's establishment on 31.01.2020. Subsequently, one of the directors Mr. Dadhichi has been arrested by the respondents in-connection with the aforesaid investigation proceedings on 04.02.2020 by the DGCGST. It is this which has led to the filing of the present writ petition challenging

it on the ground of it being illegal as there is an express bar under Section 6(2)(1)(b) of the CGST Act, 2017.

8. The primary contention of the counsel for the petitioner was that once when a show cause notice proceeding initiated by the respondents dated 14.11.2019 is pending before the concerned authorities under the CGSGST, the respondents could not have issued or initiated another investigation or proceeding in-respect of the same subject matter, which otherwise is not permissible under the provisions of Section 6(2)(1)(b). Referring to the aforesaid provision of law, the petitioner submitted that the whole investigation proceeding initiated by the respondents including that of the arrest that has been made is without and beyond jurisdiction.
9. According to the counsel for the petitioner, once the matter ceased by the officers of the CGSGST Act, 2017, the same cannot be simultaneously put to another investigation by the officers appointed under section 3 of the CGSGST Act, 2017 in view of the express bar under section 6(2)(b). According to the counsel for the petitioner, the subject matter in both the proceedings is in-respect-of the alleged use of fake and fictitious invoices. Thus, the entire subsequent investigation and the proceedings drawn deserves to be quashed.
10. The counsel for the respondents No.2 to 4 opposing the petition submitted that the writ petition is totally misconceived in as much as the grounds raised by the petitioner in the instant case is not one which is sustainable. According to the petitioner, the show cause notice initially issued was firstly in respect of using of fake invoices for the purpose of Input Tax Credit (ITC) and the subsequent show cause notice is in

respect of the tax demand proposed of Rs. 11 crores on account of dealing with the fake dealers and fake invoices. However the present investigation, which has been initiated and where one of the Directors of the petitioner-establishment has been arrested, has been at the instance of the officers of the Directorate of General of GST Intelligence Wing, which had received certain secret information in respect of the petitioner issuing fake ITC invoices worth crores of rupees to different Firms in the Country. According to the counsel for the respondents No.2 to 4, the petitioner was dealing with the fake transactions by issuance of fake and bogus invoices relating to the transactions of Steel goods without the actual supply of goods being made and subsequently these bogus and fake invoices were used for facilitating for the discharge of his own GST liabilities. Since the offences reflected from the transactions were made in more than one State, the respondents had all the powers for initiating a proceeding under the provisions of Section 132 of the CGST Act, 2017.

11. The counsel for the respondents No.2 to 4 further referring to the documents enclosed along with the writ petition submitted that from the perusal of the records in the course of investigation as of now the respondents have been able to detect the petitioner of having availed ineligible ITCs of approximately Rs. 60 crores and the said amount is likely to increase manifold in the course of further investigation taking into consideration the large number of bogus transactions that the petitioner-establishment have shown to have been made.
12. The further contention of the counsel for the respondents No.2 to 4 is that since the nature of offence now being investigated is entirely

different than the proceedings drawn in the show cause notice or the proceedings pending before the State Authorities are concerned, it would not be hit by the provisions of Section 6(2)(1)(b). According to the counsel for the respondents No.2 to 4, the present investigation is more in respect of the defrauding of the government revenue committed by the petitioner in contravention to the provisions of the CGST Act and the nature of offence committed by the petitioner is one which false under the provisions of Section 132(1)(i) and in view of the provision of Section 132(5) of the said Act, the offence is also a cognizable offence and is a non-bailable offence as well. Thus, prayed for the rejection of the writ petition.

13. Having heard the contentions put forth on either side and on perusal of record and also taking note of the provisions of the Act what clearly reflects is that the initial issuance of the show cause notice and the proceedings drawn were in respect of the intrastate transactions made by the petitioner, wherein he had used fake and bogus invoices for the purpose of availing ineligible ITC, whereas subsequent to a secret information being received and further investigation being made, particularly in the course of a raid, which was conducted at the premises of the petitioner-establishment and other related premises, it was revealed that the magnitude of the offence committed by the petitioner-establishment was far more grave and serious. It was in the course of raid found that the petitioner had been making false and bogus transactions and has illegally availed ineligible ITC credits. The magnitude of which detected by now is approximately Rs.60 crores and with further investigation the amount is likely to increase manifold.

14. This Court does not find any substance in the arguments of the petitioner, when they say that the investigation and the proceedings now initiated is one, which hit by Section 6(2)(1)(b) of the CGST Act of 2017. What has also to be appreciated is the fact that there is a clear distinction between a proceeding drawn for the demand of tax evaded by the petitioner-establishment and the investigation be conducted by the Department of the DG, GST Intelligence Wings in respect of an offence committed by an establishment by way of using bogus and fake invoices and illegally availing ITCs, which the petitioner-establishment otherwise was ineligible.
15. So far as the judgments referred to by the petitioner in support of his contention what cannot be lost sight of is the fact that those judgments were rendered under entirely different contextual background as compared to the factual matrix in the present case and the ratio laid down in those judgments are also not what could be applied at this juncture. Even the judgments of the Division Bench of this Court referred to by the petitioner-establishment again is one, which has been decided in an entirely different contextual background as compared to the facts of the present case and those judgments are distinguishable on facts itself.
16. The writ petition thus fails and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge