IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 7906 of 2021

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Maa Bhagwati Spongiron Pvt. Ltd., having registered office at Ramtomaha, Near Pakahanu Dahla, P.S.-Meenapur, District-Muzaffarpur through its Managing Director, Sri Vinod Kumar Jaiswal, son of Late Kedar Prasad Jaiswal, resident of village-Triloki Nagar, Koriya Tola, P.O. & P.S.-Raxaul, District-Motihari.

........Petitioner

Versus

1. The Union of India through the Commissioner of Central Excise, Central & GST, Central Revenue Building, Bir Chand Patel Path, Patna- 800001.
2. The Commissioner (A.E.), CGST & CX. Patna-II, Bihar.
3. The Assistant Commissioner (A.E.), CGST & CX. Patna-II, Bihar.
4. The Additional Commissioner (A.E.), CGST & CX. Patna-II, Bihar.
5. The Joint Commissioner (A.E.), CGST & CX. Patna-II, Bihar.
6. The Joint Commissioner (Anti Evasion), Central GST Commissionerate, Ghaziabad.
7. The Assistant Commissioner (Prev.) GST & CX, Jamshedpur.
8. M/s Shiva Steel having its registered office address at Plot No. 35, Shop No.02, Loha Mandi Ghaziabad, U.P.
9. Maa Laxmi Enterprises having its registered office address at Village - Bela, S/o- Ashish Kumar Dash, Bharagora, Jamshedpur, Jharkhand

.... Respondents

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Appearance :

For the Petitioner/s : Ms. Deepika Sharma, Advocate
For Respondent Nos. 1 to 7: Dr. K.N.Singh, ASG
Mr. Anshuman Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)
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(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 03-05-2021

Petitioner has prayed for the following relief(s):

i) To issue a writ/order/ direction in the nature of certiorari for quashing the letter dated 21.01.2021 issued under the signature of the Assistant Commissioner (A.E.), CGST & CX. Patna-II, by which the petitioner has been requested to reverse all the ITC along with interest and penalty, which has been availed by the petitioner on the basis of the invoices issued by both the non-existent and fictitious firm. (Annexure- 5).

ii) To hold and declare that the issuance of letter dated 21.01.2021, wholly illegal as none of the mandatory provisions of the GST Act, 2017 has been followed.

iii) To pass an ex-parte/ interim relief preventing the respondents from any coercive actions against the petitioner.

iv) To any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of the case.

Having heard learned counsel for the parties present through virtual mode, other than the Private Respondents, we are of the considered view that the averments made in Paragraph 12 of the petition cannot be substantiated by any cogent material placed on record before us. However, this being a question of fact is left open to be raised and adjudicated before the appropriate fact finding authority. Paragraph 12 reads as under:-

> "12. That thereafter, the accountant of the petitioner company namely Rahul Punia went to the GST Commissionerate, Patna on 22.01.2021 in order to enquire regarding the letter dated 21.01.2021 issued by the respondent authorities. Upon which the respondent authorities of the said department forcibly constrained the accountant to put signature on the Panchnama, which was prepared by the respondent authorities on 22.01.2021 itself."

Prima facie, we are of the considered view that the power exercised under Section 67 of the Central Goods and Services Tax Act, 2017 is distinct, separate and independent of the power to be exercised by the competent authority under Section 71. The intent, purpose and scope of both the Sections are distinct, separate and independent and not subject to each other.

It is true that notice dated 21.01.2021 (Annexure-5) under Section 71 stood issued to the petitioner, but then, upon subjective satisfaction of having reason to believe, the officer authorized to conduct the search and seizure operations under Section 67, did do per law.

From the reading of the Panchnama [Page-75], it is evident that two independent witnesses were firstly associated; who volunteered to the authorities to be part of the search and seizure operations; and only thereafter in their presence, petitioner's premises was searched on 21.01.2021, wherefrom the material allegedly kept with an endeavour of evading the tax payable under the Act was recovered. The quantity is huge.

We may not be misunderstood to have expressed any opinion of such fact, but only clarify that record does not reveal the search and seizure operations to be illegal in any manner, save and except of what we have observed supra.

At this stage, Ms. Deepika Sharma, learned counsel for the petitioner requests expeditious disposal of the matter by the competent authority, more so for the reason that the seized material was legitimately procured.

Well, none can have any objection to the same.

As such, we dispose of the present petition on the following mutually agreeable terms:

(a) Petitioner shall fully cooperate and participate in the passing of the order by the competent authority, so required to do so pursuant to the exercise of power under Section 67 of the Act.

(b) Sri Ashuman Singh, learned counsel states that such authority is respondent no.4, namely The Additional Commissioner (A.E.), CGST & CX, Patna-II, Bihar. As such, petitioner shall appear before the said authority on 12th May, 2021, at 10 30 A.M.

(c) Sri Anshuman Singh, learned counsel for the respondents, states that link for hearing through virtual mode shall be made available to the petitioner. Ms. Deepika Sharma, appearing for the petitioner, undertakes to supply the particulars within next two days on which the link is to be sent.

(d) Proceeding shall be conducted through virtual mode and it shall also be opened for the parties to exchange pleadings and documents through such mode.

(e) The said authority shall pass an appropriate order in accordance with law, at the earliest and preferably within a period of three months thereafter.

(f) If the petitioner chooses to prefer an appeal, assailing the very same order, subject matter of the present petition, it shall be open for them to do so, per law, within a period of four weeks from today. In such an eventuality, the issue of limitation shall not come in the way of decision of such appeal on merits. We may not be misunderstood to have expressed any opinion on the maintainability of the appeal, for such order is passed purely on the request made by the learned counsel for the petitioner.

(g) The petitioner shall not take any unnecessary adjournment and fully cooperate in the proceedings.

(h) If necessary, proceedings during the time of current Pandemic [Covid-19] would be conducted through digital mode.

(i) In any event, it is always open for the petitioner to challenge the order in accordance with law.

The petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	03.05.2021
Transmission Date	