

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No.5582 of 2022

Gayatri Educational and Charitable Trust, NH-5, Nayapalli, Bhubaneswar

Petitioner

Mr. Jagamohan Pattanaik, Advocate

-versus-

The Chairperson, Central Board of Excise & Customs, Ministry of Finance, Department of Revenue, North Block, New Delhi & Others

Opp.Parties

Mr. Radheshyam Chimanka, Senior
Standing Counsel

CORAM:
JUSTICE JASWANT SINGH
JUSTICE M.S. RAMAN

ORDER

Order No.

21.04.2022

- 02.** **1.** This matter is taken up by virtual/physical mode.
- 2.** The Petitioner is before this Court under Article 226 of the Constitution of India with a prayer to quash the notice dated 28th/29th December, 2020 (Annexure-9) relating to non-discharge of liability of service tax and summons dated 15th February, 2022 (Annexure-13) under Section 70 of the Central Goods and Services Tax Act (for short, 'the CGST Act'). It is alleged by the Petitioner

P.T.O.

that its application dated 12.12.2021 (Annexure-12) for supply of documents has not been considered.

3. Heard Mr. Jagamohan Pattanaik, counsel for the Petitioner and Mr. Radheshyam Chimanka, Senior Standing Counsel appearing for the Opposite Parties.

4. The brief fact adumbrated in the present case is that the Petitioner claims to be an Educational and Charitable Trust and carries on educational activities. On 27th October, 2020, search operation was conducted by the Officers of Directorate General of Goods and Services Tax Intelligence, Bhubaneswar Zonal Unit, Bhubaneswar (DGGI) at the residential premises of M/s. Gayatri Educational and Charitable Trust. In exercise of powers conferred under section 67 of the CGST Act, certain documents were seized during search operation. On the said date i.e. 27th October, 2020, summons under section 70 of the Central Goods and Services Tax Act, 2017 has been issued to carry out the inquiry in the matter, whereby the Trustee of the Petitioner-Trust, namely, Sushant Kumar Rout was instructed to be present on 5.11.2020 to give evidence and/or to produce the following documents in his possession or his control:-

“1. Remaining money receipt, 2. banks statement of M/s. Gayatri Educational and Charitable Trust, 3. Form 26AS for the FY-2014-15 to 2020-21 of both units, 4. Balance sheet of Sri Susant Kumar Rout, 5.

Reconciliation statement of both units, 6. Copy of fee structure issued by utkal university.

2. Income tax Return of both units

3. Depose in writing.”

On 6th November, 2020, another summons was issued to the said Trustee to be present on 16th November, 2020 in connection with service tax under Finance Act, 1994 and Central Goods and Services Tax Act, 2017 and the said Trustee was required to give evidence and also to produce the following documents:-

“1. Tuition fee ledgers for the FY-2014-15 to 2020-21 of M/s. Gayatri Educational & Charitable Trust having PAN-AACTG0062A & Susant Kumar Rout having PAN-AHMPR1800N.

2. Money receipts for the FY-2014-15, 2015-16, 2016-17 & 2017-18 of M/s. Gayatri Educational & Charitable Trust.

3. Income tax return & Form 26AS for the FY-2014-15 to 2019-20 of M/s. Gayatri Educational & Charitable Trust.

4. Copy of Bank statement of all bank account for the period from Apr-2014 to till date of M/s. Gayatri Educational & Charitable Trust.

5. Copy of S.Tax & GST registration Certificate of M/s. Gayatri Educational & Charitable Trust.

6. Service tax & GST reconciliation statement for the FY-2014-15 to 2020-21 (till date).

7. Sample copy of certificate issued against short terms coaching course.”

From the documents enclosed to the writ petition, it is revealed that on other dates, summons were issued in connection with the inquiry calling for documents.

5. On 28th/ 29th December, 2020, a show cause notice was issued narrating fact that the Petitioner-Trust was engaged in providing taxable service under the category of “Commercial Training or Coaching” Service through a Coaching Centre in the name of “LIT” without getting itself registered under Section 69 of the Finance Act, 1994 and said show cause notice indicated that after initiation of investigation by DGGI, Gayatri Educational and Charitable Trust-Petitioner registered itself vide Service Tax Code-AACTG0062ASE001 for coaching premises. By the said show cause notice, the Petitioner was called upon to show cause as to why the following action shall not be taken:-

“11. xx xx — xx xx xx

(i) Service Tax of Rs.65,35,000/- Education Cess of Rs.21,167/-, Secondary and Higher Education Cess of Rs.10,583, Swachh Bharat Cess of Rs.1,56,560/-& Krishi Kalyan Cess of Rs.1,31, 550/- total amounting Rs.68,54,859/-(Rupees Sixty Eight Lakh Fifty Four Thousand Eight Hundred Fifty Nine) oly, not paid should not be demanded and recovered from them under the proviso to Section 73(1) of the Finance Act, 1994 read with Sections 91 and 95 of the Finance (No.2) Act, 2004 and Sections 136 & 140 of the Finance Act 2007,

Section 119 of the Finance Act, 2015 and Section 161 of the Finance Act, 2016;

(ii) Interest, at the applicable rate(s) on the amounts mentioned at (i) above should not be demanded from them under Section 75 of the Finance Act, 1994;

(iii) Penalty should not be imposed on them under Section 78 of the Finance Act, 1994 for willful suppression and mis-statement of the facts for the contravention of the provisions of Chapter V of the Finance Act, 1994 and Rules made there-under with intent to evade payment of Service Tax;

(iv) Penalty should not be imposed on them under Section 76 of the Finance Act, 1994, for non-payment of service tax in contraventions of above quoted provisions of the Finance Act, 1994;

(v) Penalty should not be imposed on them under Section 77 of the Finance Act, 1994, for their failure to take service tax registration in contravention of Section 69 of Finance Act, 1994 read with Rule 4 of Service Tax Rules, 1994.

(vi) Service Tax of Rs.5,23,318/- and Swachh Bharat Cess of Rs.2,617/- only paid in the course of investigation by the Notice should not be appropriated against the amount demanded at (i) above.

(vii) Interest of Rs.3,73,942/- only paid in the course of investigation by the Notice should not be appropriated against the amount demanded at (ii) above.”

6. It appears from Annexure-11 that the Petitioner has furnished its reply to show cause on 4.5.2021.

7. The aforesaid show cause notice dated 28th/29th December, 2020 relates to non-discharge of liability under the Finance Act, 1994. Another summons dated 15.2.2022 vide Annexure-13 has been issued invoking under Section 70 of the Central Goods and Services Tax Act, 2017 in connection with non-payment of GST for carrying out further inquiry into the matter under the Central Goods and Services Tax, 2017. The Petitioner was called upon to produce the documents as referred to in letters dated 13.12.2021, 6.1.2022, 20.1.2022 and 3.2.2022.

8. Counsel for the Petitioner submitted that though he has produced required documents as called for earlier in connection with show cause notice dated 28th/29th December, 2020, the Authority should not have issued frequent summons including summons dated 15.02.2022 (Annexure-13), causing thereby 'mental agony and 'tremendous pressure' on the Petitioner-Trustee.

9. Mr. Radheshyam Chimanka, Senior Counsel appearing for the Opposite Parties has raised objection and urged not to entertain the writ petition. Therefore, he submitted that the writ petition is liable to be dismissed in *limine*.

10. Perusal of the documents enclosed to the writ petition and sequence of events show that the Petitioner is alleged not to have discharged its liability under the Finance Act, 1994 nor under the Central Goods and Services Tax Act, 2017.

Counsel for the Petitioner contended that the service which it renders has been put under the negative list during the service tax regime and its educational activities do not fall within the purview of the GST Act.

11. Whether the activities undertaken by the Petitioner attract Service Tax under the Finance Act, 1994 and are exigible to GST under the Central Goods and Services Tax Act, 2017 are disputed question of facts which are necessarily to be adjudicated upon by the authorities vested with the power under the relevant statute.

12. With regard to prayer of the Petitioner to quash the show cause notice and summons, we are not persuaded to have indulgence at this stage. Catena of rulings of the Hon'ble Apex Court as well as this Court laid down in *Union of India Vrs. Coastal Container Transporters Association*, (2019) 20 SCC 446; *Star Paper Mills Ltd. Vrs. State of Uttar Pradesh*, (2006) 148 STC 144 (SC); *South India Tanners & Dealers Association Vrs. Deputy Commissioner of Commercial Taxes*, (2008) 23 VST 8 (SC); *Supreme Paper Mills Limited Vrs. Assistant Commissioner of Commercial Taxes*, (2010) 11 SCC 593; *Bhubaneswar Development Authority Vrs. Commissioner of Central Excise*, 2015 SCC OnLine Ori 53; *National Aluminium Company Ltd. Vrs. Employees State Insurance Corporation*, 2012 SCC OnLine Ori 90 would suggest that the Petitioner is required to file its response to the show-cause notice and raise objection before the authority. This

Court in the case of *Rohit Kumar Behera vs. State of Orissa, 2012*
(II) ILR-CUT-395, held as under:

“21. Law is well settled that unless it is shown that the notice to show cause has been issued palpably without any authority of law, the show cause notice cannot be quashed in exercise of writ jurisdiction under Articles 226 and 227 of the Constitution.”

13. As regards application dated 12.12.2021 (Annexure-12) for supply of documents is concerned, as stated by the counsel for the Petitioner to have been pending before the authority, the appropriate authority is competent to decide the same in accordance with law.

In view of the above, this Court does not deem it fit to interfere with the process of inquiry by the Competent Authority- Opposite Parties.

14. Accordingly, the writ petition is disposed of with the observation that it is open for the Petitioner to participate in the proceeding before the Opposite Parties.

(Jaswant Singh)
Judge

(M.S. Raman)
Judge