

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2384 of 2023

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M/s Bankipore Club Ltd through Honourary Secretary Mahesh Agarwal, Male, aged about 62 years, Son of Late Jivraj Agarwal, resident of Kakamaa House, Krishna Bhawan, Fraser Road, P.O.- GPO, P.S.- Kotwali, District-Patna, Bihar.

... .. Petitioner/s

Versus

1. The Union of India through the Principle Commissioner, CGST and CX, CR Building (Annexe), Bir Chand Patel Path, Patna.
2. The Principle Commissioner, CGST and CX, CR Building (Annexe), Bir Chand Patel Path, Patna.
3. The Assistant Commissioner, CGST, Anti Evasion (Hqr), Patna- 1.
4. The Superintendent, CGST and CX, CR Building (Annexe), Bir Chand Patel Path, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Rastogi, Sr. Advocate Mr. Alok Kumar Shahi, Advocate Mrs. Archana Sinha, Advocate
For the Respondent/s	:	Mr. Anshuman Singh, Sr. Standing Counsel (CGST & CX)

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 27-03-2023

The petitioner claims to be a Members Club which was established in the year 1865. It is the petitioner's case that it provides its members all usual privileges, advantages, conveniences accommodation of a club. The petitioner and its members operated on the principles of agency and the club has its relationship with its individual members based on the



principle of mutuality.

This writ application under Article 226 of the Constitution of India has been filed putting to challenge summons dated 13.01.2023 issued by the Superintendent, CGST & CX, Patna, whereby the Secretary of the club has been summoned under Section 70 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as “CGST Act”) to give evidence and produce documents including statement showing details of payment received under different heads/services from 01.07.2017 till date and a copy of the Balance Sheet, Profit & Loss Account and Form 26 AS for the Financial Years 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22; and trial Balance Sheet for the Financial Year 2022-23. The petitioner has also been asked to produce copy of bank statements of the bank accounts related to the club from 01.07.2017 till date as per the said impugned summons.

Mr. Ajay Kumar Rastogi, learned Senior Counsel appearing on behalf of the petitioner has submitted that as the club operates on the principles of agency and having its relationship with the individual members based on the principle of mutuality, the CGST Act was not applicable to it till the CGST Act was amended with the insertion of Clause (aa) to



Section 7 of the CGST Act by Finance Act, 2021 with effect from 01.01.2022. He contends that only after insertion of Clause (aa) to Section 7 of the CGST Act, the club has become liable to pay CGST which amendment is apparently subsequent to the Hon'ble Supreme Court's decision in the case of **State of West Bengal and others v. Calcutta Club Limited**, reported in **(2019) 19 SCC 107**. He has submitted accordingly that the petitioner ought not to have been directed to produce any document for the transactions prior to 01.01.2022.

Learned counsel for the Union of India has, on the other hand, submitted that it is not apparent from the pleadings in the writ petition that the petitioner is registered under the CGST Act or Bihar Goods and Services Tax Act, 2017.

Section 70 of the CGST Act, which confers upon the proper officer to summon any person, reads as under:-

“70. Power to summon persons to give evidence and produce documents.— (1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil Court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(2) Every such inquiry referred to in sub-



section (1) shall be deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).”

It can be easily culled out from the plain reading of Section 70 of the CGST Act that it confers upon the proper officer the power to summon any person whose attendance is considered to be necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.

In view of the wide scope of Section 70 of the CGST Act, we are not inclined to interfere with the impugned summons.

It will, however, be open to the petitioner to take a plea before the proper officer under Section 70 of the CGST Act while responding to the summons that the club does not have any tax liability under the CGST Act prior to the amendment introduced in the CGST Act with effect from 01.01.2022 with the insertion of Clause (aa) to Section 7(1) of the CGST Act. It goes without saying that it shall be incumbent upon the competent/proper officer to take into account the said provision of law and any other plea while taking any further decision.



The writ application stands disposed of accordingly.

(Chakradhari Sharan Singh, ACJ)

(Madhuresh Prasad, J)

P.K.P./Anushka

AFR/NAFR	
CAV DATE	
Uploading Date	03.04.2023
Transmission Date	

