

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3651 of 2023

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Fondement Bitumenous Industries Private Ltd. a company incorporated under the Companies Act, 1956 having its office at Ward No. 30, Narayan Garh, Tripurari Cable Limited, Gaya, Bihar- 823001 through its Director Deepak Kumar Singh (Male, aged about 37 years) son of Shri. Gauri Shankar Singh resident of 9A/48, Narayan Garh P.S. Rampur, Gaya.

... .. Petitioner/s

Versus

1. State of Bihar through the Commissioner of State Tax, having its office at Vikas Bhawan Bailey Road, Patna.
2. Asst. Commissioner of State Tax, Gaya, Magadh, Bihar.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 3279 of 2023

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Fondement Bitumenous Industries Private Ltd. a company incorporated under the Companies Act, 1956 having its office at Ward No. 30, Narayan Garh, Tripurari Cable Limited, Gaya, Bihar - 823001 through its Director Deepak Kumar Singh (Male, aged about 37 years) son of Shri. Gauri Shankar Singh resident of 9A/48, Narayan Garh, P.S. Rampur, Gaya.

... .. Petitioner/s

Versus

1. State of Bihar through the Commissioner of State Tax, having its office at Vikas Bhawan Bailey Road, Patna.
2. Asst. Commissioner of State Tax, Gaya, Magadh, Bihar.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 3651 of 2023)

For the Petitioner/s : Mr. D.V. Pathy, Advocate

For the Respondent/s : Mr. Vikash Kumar, SC 11

(In Civil Writ Jurisdiction Case No. 3279 of 2023)

For the Petitioner/s : Mr. D.V. Pathy, Advocate

For the Respondent/s : Mr. Vikash Kumar, SC 11

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

Date : 11-04-2023

The above petitions are filed by the same assessee against two assessment periods; C.W.J.C. No. 3279 of 2023 with respect to the period July 2017 to March 2018 (2017-18) and C.W.J.C No. 3651 of 2023 with respect to the period April 2018 to March 2019 (2018-19).

The specific ground on which the petitioner has chosen to file the writ petitions, challenging the assessment order under Article 226 of the Constitution of India; despite existence of alternative remedies as provided under the Statute, is that the parallel proceedings initiated by the Central Tax Officer and the State Tax Officer cannot be sustained.

We need not look at merits of the matter since the question raised is only on the jurisdiction. The petitioner was issued with summons by the Central Tax Officer as per Annexure-1, pursuant to which the petitioner is said to have filed the required documents before the said authority. The State Tax Authority, by notices dated 22.08.2022 and 18.08.2022, has initiated proceedings on the very same transaction is the contention taken.



The learned counsel for the petitioner would also refer to Annexure-5, Notification issued by the Central Tax Authority, which, according to the learned counsel, restrains the State Tax Authority from initiating any proceeding with respect to which there is a proceeding initiated by the Central Tax Authority.

The Notification relied on by the petitioner is produced as Annexure-5 in both the writ petitions. Annexure-5 is dated 05.10.2018 and is issued by the Central Board of Excise and Customs to clear the ambiguity regarding initiation of enforcement action by the Central Tax Officer in case of the taxpayer being assigned to the State Tax Authority and *vice versa*. Section 6 of the Bihar Goods and Services Tax Act, 2017 (hereinafter referred to as the 'BGST Act') provides for authorization of the officers appointed under the Central Goods and Services Tax Act (hereinafter referred to as the 'CGST Act') to be the Proper Officer for purposes of even the State Goods and Services Tax Act, subject to any condition laid down by the Government, on the recommendation of the Council, specified by notification. Sub-section (2) of Section 6 also provides that when any officer, under CGST Act, authorized as a Proper Officer, issues an order under the State Act, he shall also issue



an order under the Central Act, as per Clause (a). Clause (b) further provides that on such Proper Officers, under the Central Act, initiating any proceedings, no proceedings shall be initiated by the Proper Officer under the State Act.

The Central Board of Excise and Customs, by Annexure-5 notification, clarifies that both the Central and State Tax Authorities are authorized to initiate intelligence based enforcement action on the assessee irrespective of the administrative assignment of the assessee to any particular authority and that such authority, who initiates action, is empowered to complete the entire process of investigation. It is also clarified that when a Central Tax Authority initiates such intelligence based enforcement action against an assessee, administratively assigned to the State Tax Authority, there is no requirement to transfer the said case to the State Tax Authority. The very same reservation is available insofar as a State Tax Authority initiating enforcement action against an assessee administratively assigned to the Central Tax Authority.

In fact, there is no prohibition in the State Tax Authority initiating an action where the Central Tax Authority is seized of the matter but, however, on the very same transaction, obviously, only one assessment can be made and it is proper that



the authority, who initiated the action first, continues with it and the other authority restrains itself from so proceeding.

This also seems to be the purport of the judgment relied on by the learned counsel for the petitioner produced as Annexure-7. It is also to be specifically noticed that in the said case the opposite party, the State did not dispute that the Circular dated 05.10.2018 precludes the State Good and Services Tax Authority from proceeding in the matter as long as the Central Authorities are seized of a particular matter. Therein, the specific case of the petitioner was also that the petitioner had appeared before the Central Authority and placed the entire matter before the Central Authority and hence, he is precluded from agitating the cause properly before the State Tax Authorities.

In the present case, no such difficulty arises. The proceeding initiated by the Central Tax Authority and State Tax Authority are against different assesseees. The notice issued, produced at Annexure-1, in both the writ petitions, is under Section 70 of the CGST Act, 2017, which is the power to summon persons to give evidence to produce documents and not for intelligence based enforcement action on the noticee, who is the petitioner herein. The summons requires the petitioner



herein to produce documents or things detailed as 1, 2, 3, the last of which being the details of purchases made from one M/s D.S.Bitumix, Kolkata-700001. The action, obviously, initiated by the central authority is against M/s D.S.Bitumix, Kolkata-700001 and the summons is issued only insofar as the petitioner having dealt with the said assessee.

The notice issued to the assessee by the State Tax Authority, as seen from Annexure-3 dated 18.08.2022 in C.W.J.C No. 3279 of 2023, notices that during the course of investigation conducted by the Central Tax Authority, Kolkata, it was revealed that M/s D.S.Bitumix, Kolkata-700001, a bogus firm was engaged in availment of fake input tax credit and subsequently passing of irregular/inadmissible input tax credit to many entities. The petitioner was one such dealer, who had allegedly purchased material from the said bogus firm. The proceeding initiated by the petitioner is with respect to the input tax credit claimed by the petitioner on the purchases made from the bogus dealer. The investigation, as initiated against the supplier of the petitioner, cannot have any bearing on the action taken by the State Tax Authority against the petitioner for the relevant periods, being distinct from each other and against two separate assesseees.



We find no reason to entertain the writ petition and
dismiss the same in *limine*.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

Aditya/Sujit

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	17.04.2023.
Transmission Date	

