

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7635 of 2023

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Mahavir Sharmik and Nirman Swalambi Sahkari Samiti Limited a Co-operative Society having its office at Walipur, Jamalpur, Munger, Bihar-811214 through its Chairman Abhishek Kumar (Male), aged about 20 years, son of Rajkapur Singh, resident of Chandanpura, Jamalpur, Munger, Bihar-811214.

... .. Petitioner/s

Versus

1. State of Bihar through Commissioner of State Tax, Bihar, Patna having its office at Vikas Bhawan, Patna.
2. Addl. Commissioner of State Tax (Appeals), Bhagalpur Division, Bhagalpur.
3. Asst. Commissioner of State Tax, Munger, Bhagalpur, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.D.V.Pathy, Advocate Mr. Hiren Karan, Advocate
For the Respondent/s	:	Mr.Raghwanand (GA-11) Mr. Pratik Kumar, AC to GA-11

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-12-2023

The petitioner challenges an assessment order dated 11.01.2021 (Annexure-3 series), as confirmed by the first Appellate Authority under the Bihar Goods and Services Tax Act, 2017 (for brevity “BGST Act”) vide orders dated 10.01.2023 (Annexure-4 series); by a writ petition, especially since the Tribunal under the BGST Act has not yet been constituted and the petitioner is deprived of a consideration in the second appeal, as provided for in the statute. As per the



notification issued by the Government, pending constitution of the Tribunal there is a stay of recovery on payment of 20 per cent of the amounts disputed which remains to be paid, as per the assessment order. However, in the present case, the petitioner contends that the levy is not sustainable going by the specific notification which exempts the activity carried on by the petitioner; being removal of solid waste which is not a works contract and there is no supply of goods as would be required by the definition of 'works contract' under the BGST Act.

2. The petitioner is a Cooperative Society registered under the BGST Act, who was issued with a notice under Section 74 quantifying the demand of tax and penalty for the Assessment Year 2019-20; specifically from November, 2019-February, 2020. The copy of the notices issued are produced as Annexure-1 series. Obviously, the tax levy has been proposed on the basis of the deductions made by the Nagar Parishad, Jamalpur under the Income Tax Act. The assessee contends that the mere deduction of tax on income, a direct tax, cannot lead to the levy under Goods and Services Tax Act being made, which is an indirect tax.

3. The assessee admittedly did not respond to the



notices and Annexure-2 series of orders were passed demanding the tax under the BGST Act. The demand notices are also annexed as Annexure- 3 series. The petitioner filed an appeal specifically pointing out Notification No. 12/2017 issued by the Government of India granting exemption from payment at tax in relation to a function entrusted to a Municipality under Article 243W of the Constitution of India. It was argued that the invocation of jurisdiction under Section 74 was illegal, without authority and wholly improper. The appeal, however, was dismissed by Annexure-4 series despite a similar appeal filed by another assessee having been allowed by the very same Appellate Authority as per Annexure-6 order.

4. Learned counsel for the petitioner, Shri D.V. Pathy took us through the notification issued by the Central Government, the specific work order issued to the petitioner by the Nagar Parishad, Jamalpur, produced as Annexure-5 and also the appellate order produced as Annexure-6.

5. Learned Government Advocate Shri Raghwanand, however, pointed out that it is a works contract under which the tax was levied under the BGST Act. The contract awarded to the petitioner is produced as Annexure-5 which specifically indicates that for the eleven months, which is the subject of



consideration, the petitioner has been given the work of collection and disposal of waste materials from each household, shop and commercial centres as also sanitation work of drainages/road in the specified seventeen wards of the Municipality. Other conditions under which the sanitation work is to be carried out, which includes management of solid waste are also specified in the work order. The work granted to the petitioner has to be tested with the exemption granted by the Central Board of Indirect Taxes and Customs of the Ministry of Finance, Government of India, which is produced as Annexure-7.

6. Specific reference has to be made to the exemptions granted between the period 01.07.2012 to 10.07.2014 and 11.07.2014 to 30.06.2017 which is specifically referred to in the circular dated 30.05.2018, which is as under:-

“In the period from 01.07.2012 to 10.07.2014

“Services provided to Government, a local authority or a governmental authority by way of

*“(a) carrying out any activity in relation to any function ordinarily entrusted to a municipality in relation to water supply, public health, sanitation conservancy, solid waste management or slum improvement and upgradation; or ...
... ..”*

In the period from 11.07.2014 to 30.06.2017

*“Services provided to Government, a local authority or a governmental authority by way of
(a) water supply, public health, sanitation conservancy, solid waste management or slum*



improvement and upgradation”

Hence, the work carried out by the petitioner is exempt from payment of tax under the BGST Act.

7. We also have to notice the definition of works contract under the BGST Act, which is as below:-

“works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract”

8. There is no supply of goods in the solid waste management disposal work awarded to the petitioner. In the above circumstances, the activity of the petitioner regulated by the work order produced as Annexure-5 and the consideration received for the same would be exempt from the BGST Act. It is also crystal clear that on similar circumstances, by Annexure-6 order, the Appellate Authority had allowed the appeal in the case of a different assessee, who had been carrying on the very same work of solid waste disposal in the very same Municipality.

9. In the above circumstances, the assessment orders produced as Annexure-3 series, the demand notices and Annexur-4 series orders in appeal are set aside. The assee-



petitioner is directed to produce the details of the tax deduction at source made by the Municipality under the Income Tax Act and provide the evidence, of the consideration made by the Municipality on which the tax deductions were effected under the Income Tax Act, being one for solid waste disposal work. The assessee shall appear before the Assessing Officer within a month from the date of receipt of the certified copy of this judgment and produce materials in substantiation. The Assessing Officer shall consider the same and pass orders in accordance with law after taking note of the declaration made herein regarding the non-exigibility of tax on solid waste management activities and sanitation work carried on at the instance of the State or the local authorities.

10. The writ petition stands allowed with the above directions.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	06.12.2023
Transmission Date	

