

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1384 of 2021

M/s. Vishwanath Iron Store, a partnership firm having its place of business at Allahabad Bank Side, Pani Tanki Road, Dehri-on-Sone through its partner namely Arvind Kumar Sharma male aged about 35 years son of Jagarnath Sharma resident of Allahabad Bank side, Pani Tanki Road, Dehri-on-Sone, Rohtas- 821307.

... .. Petitioner/s

Versus

1. The Union of India to the Secretary, Ministry of Railways, Government of India New Delhi.
2. The General Manager, East Central Railway, Hazipur.
3. The Principal Chief Materials Manager, East Central Railway, Hazipur.
4. The Deputy Chief Material Manager (Depot), East Central Railway, Samastipur.
5. The Financial Advisor and Chief Accounts Officer, East Central Railway, Hazipur.
6. The State of Bihar through the Principal Secretary cum Commissioner, Department of State Taxes, Government of Bihar, Patna.
7. The Joint Commissioner of State Taxes, Sasaram Circle, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Gautam Kumar Kejriwal, Advocate
For the Respondent/s	:	Dr. K. N. Singh, ASG
		Mr. Anshuman Singh, CGC.

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 06-10-2023

The petitioner, who is an assessee under the goods and services tax regime, seeks for correction of an invoice for the purpose of availing input tax credit.

2. The petitioner is a partnership firm having its place of business at Sasaram within the State of Bihar. The



partnership firm is engaged in the business of sale and purchase of scrap materials and is registered under the Bihar State Goods and Services Tax Act, 2017. The petitioner applied pursuant to a tender issued by the East Central Railways, for sale of scrap and other such materials by way of an e-auction. The petitioner turned out successful and on the basis of a sale invoice, produced at Annexure-2, the materials auctioned having a total worth of Rs. 17 lakhs, was taken possession of by the petitioner. The invoice at Annexure-2 levied CGST and SGST at 9% each. The petitioner on the basis of the invoice paid the amounts and obtained possession of the materials.

3. It is the submission of the petitioner that the partners of the petitioner were not aware of the requirements and only later, when the tax consultant was apprised of the delivery/sale invoice, it was pointed out that since the goods were taken possession of in Jharkhand and moved to outside the State, what was to be levied was IGST and not CGST and SGST. In the above circumstances, the petitioner is denied the input tax credit, is the claim raised.

4. The petitioner also points out to the various notifications issued by the Railways, which speak of the invoice having been issued only by reason of a mistake and the tax



collected having been deemed to be collected as IGST and not as CGST and SGST. The learned counsel for the petitioner seeks a writ of mandamus to the authorities of the Railways for issuing of a fresh invoice; for the purpose of availing input tax credit.

5. Admittedly, the goods were delivered at Jharkhand and the sale is shown to be a local sale, as evidenced from delivery/sale release order itself. The petitioner received the goods at Jharkhand. If the petitioner had intended to move the material out of the State, the petitioner should have specified it and also insisted that the sale be treated as an Inter-State one. The auction though conducted in Samastipur, the sale was to be effected from Jharkhand and unless the sale occasions the movement of goods outside the State, it cannot be termed as an Inter-State sale.

6. In the present case, the petitioner is a dealer registered under the BGST Act and the sale was effected from the State of Jharkhand. However, there is absolutely nothing to prove the movement of goods to the State of Bihar. The mere statement of the Railways that the invoice issued should be deemed to have been issued under the IGST Act, cannot enable the petitioner to seek input tax credit. The transaction between



the Railways and the petitioner would not regulate the tax liability and in any event, the tax levied and collected as CGST and SGST would have been credited to the respective head of account. There can be no understanding between the parties to the transaction that what has been paid as SGST and CGST is to be deemed to be paid as IGST without due compliance of the provisions of the taxation enactment. Such understanding cannot also regulate an input tax credit without such credit being shown in the ledger account maintained by the assessee with the Department.

7. In this context, we have to reiterate that even in the writ petition there is nothing produced to prove that the goods had, in fact, moved outside the State of Jharkhand.

8. We also have to notice that the invoice is one issued in assessment year 2017-18. The petitioner has filed the above writ petition in the year 2021 when the enabling provision for claiming input tax credit would not have been available in any event. Section 16(4) of the BGST Act, enables the input tax credit to be taken in respect of any invoice or debit note, in the case of a supplier, goods or services or both, after the due date of furnishing of the return under Section 39, in the month of September following the end of financial year to which such



invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier. The present invoice is dated 23.10.2017 and hence, the input tax credit has to be claimed before 28.11.2017 or furnishing of the annual return for the assessment year 2017-18, whichever is earlier. There is absolutely no possibility of the input tax credit being availed of at this point.

9. We find absolutely no reason to direct the Railways to issue a revised invoice nor can the same be permitted.

10. Writ petition stands dismissed.

11. Interlocutory application, if any, shall stand disposed of.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	10.10.2023
Transmission Date	

