IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10139 of 2024

==

M/s Ahluwalia Contractors India, having its Registered Office at A-177, Okhala Industrial Area, Phase - I, New Delhi and Regional Office at International Convention Centre, ICCP, Near Magadh Mahila College, North Gandhi Maidan, Patna, Bihar - 800001 through its Authorized representative Mithilesh Kumar Singh @ Mithilesh Singh, aged 49 years S/o Late Dinesh Kumar Singh

... ... Petitioner

Versus

1. The Union of India through its Secretary and Commissioner,(GST), Ministry of Finance, Department of Revenue, having its office at Central Secretariat, North Block, New Delhi-110001.
2. The Central Goods and Service Tax, through Chairperson having its registered office, 4th Floor, East Wing, World Mark-1, Aero City, Indira Gandhi International Airport, New Delhi.
3. The Chief Commissioner, CGST and CX, Office at - C.R Building, 1st Floor, Bir Chand Patel Path, Patna, Bihar.
4. Directorate General of Goods and Services Tax Intelligence having its office at 1st and 2nd Floor, Wing No. 06, West Block-08, R.K.Puram, New Delhi through its Director.
5. Directorate General of Goods and Services Tax Intelligence, Gurugram Zonal Unit, having its Zonal office at - 1st, 2nd and 3rd Floor, Plot No.44, Sector-32, Gurugram.
6. The State of Bihar through the Secretary cum- Commissioner, Bihar Goods and Service Tax, Kar Bhawan, Beer Chand Patel Marg, Govt. of Bihar, Patna.
7. Joint Commissioner of State Tax, Special Circle, Gandhi Maidan, Patna.
8. Deputy Commissioner of State Tax (SGST), Special Circle, Gandhi Maidan, Patna.
9. Assistant Commissioner of State Tax (SGST) Special Circle, Gandhi Maidan, Patna.

... ... Respondents

==

Appearance :

For the Petitioner	:	Mr. Anurag Saurav, Advocate Mr. Sharda Raje Singh, Advocate Mr. Ankesh Bibhu, Advocate Mr. Vaibhav Kumar, Advocate Mr. Abhishek Kumar, Advocate
For the Respondent No.5	:	Mr. Dr. Krishna Nandan Singh, ASGI Mr. Anshuman Singh, Sr. SC Mr. Shivaditya Dhari Sinha, Advocate
For the Respondent Nos. 6 to 9	:	Mr. Vivek Prasad, GP-7

==

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

11 10-04-2025 Heard learned counsel for the petitioner, learned ASG for respondent no.5 and learned GP-7 for respondent nos. 6 to 9.

2. This writ application has been filed seeking the following reliefs :-

> "(i) For Quashing of Order Dated 20.05.2024 passed under Section 74(9) of BGST Act 2017 read with Section 20 of IGST Act, 2017 by Respondent No. 8 for the Financial Year 2017-2018, whereby and whereunder an amount of Rs.13,22,863.38/- has been imposed as Tax, Interest and Penalty and the said Tax (IGST) has been imposed on the ground that an amount of Rs.4,25,358/- as ITC has been wrongly availed by petitioner and Dealer whose ITC was availed by petitioner, is a non-existent supplier, but while passing Order it has not been considered by the Assessing Officer that the said issue has been raised by Respondent No.5 in the previous year and petitioner had deposited Tax, Interest and Penalty against the said transaction of an amount of Rs.15,36,770/- under protest and Respondent No.5 has dropped the proceeding after deposit of tax and on the same transaction the Assessing Officer had imposed Tax and the same amount to

Double Taxation on the same Transactions.

(ii) For Issuance of an appropriate writ/ order/ direction for setting aside order passed under Section 74 of GST Act, 2017 bearing reference no.ZD1005240161080 Dated 20.05.2024 passed by Deputy Commissioner of State Tax jurisdiction, Special Circle, Patna, Bihar, whereby and whereunder respondent authority vide Order dated 20.05.2024 without considering the reply submitted by the petitioner imposed tax including penalty and interest under Section74 of BGST Act, of an amount of Rs.12,97,342/- as IGST in the Financial Year 2017-18 on erroneous ground and without considering the Books of Account and Annual Return of the petitioner and the said tax has been imposed on the ground that the petitioner has made a claim of an amount of Rs.4,25,358/- as Input Tax Credit in their return of Dealers who were having no existent whereas the Dealers have filed their return and their tax deposit has been reflected in the GSTR 2A of the petitioner.

(iii) For setting aside DRC 07 bearing reference No.ZD1005240161080 Dated 20.05.2024 issued by Deputy Commissioner of State Tax, Special Circle, Patna, whereby and whereunder a Demand of Rs.13,22,863/- has been raised by the respondent authority as

> IGST under Section 74 of the Act.
> (iv) For restraining respondent authoritites from attaching the bank account of the petitioner and further from releasing all of the Bank Account of the petitioner which has been attached by the respondent authorities.
> (v) For granting interim protection/stay on the entire proceeding till the disposal of the present writ application.
> (vi) For issuance of any other appropriate writ(s), order (s), or direction (s) as your lordship may deem fit and proper in the facts and circumstances of the case for doing justice."

3. It is the case of the petitioner that being a company engaged in business of construction of building, hospitals and housing projects, the petitioner got a contract for the construction of the Bihar Police Bhawan, Bailey Road, Patna. For purpose of construction and completion of project the petitioner company placed certain orders, work orders with three different agencies for the supply of certain items. The details of the agencies are mentioned in paragraph-11 of the writ application. They are as follows:-

S. No.	Supplier Name & Address	Details of Materials	GST No.
1.	M/s Harshit Trading Company Office- B-56G/F, Gali No.5,	Supply of 12 mm Plywood as per IS 303; Sixe- 8"*4'	07CBTPG161 7H1ZL

	Mandoli Road, Jagatpuri, Shahdara, Delhi	No.s:HSN Coder 4413	
2.	M/s Classic Trade Office at -56, Sai Vatika Kukes Amer, Jaipur	12MM TMT FE 500D : HSN Code: 72282000	08BWZPG5953J1ZN
3.	M/s Manav International, Office at- B-4, 1st Floor, Main 100 Ft Road, Nathu Colony, Delhi.	10MM TMT FE 500 D and 12 MM TMT FE 500 D.	07EXIPS2472D45229

4. The petitioner claims that after providing the purchase order the petitioner obtained the materials making payment to the dealers along with IGST@ 18%. The dealers issued tax invoice to the petitioner and all the payments made by the petitioner to the dealers were through bank accounts.

5. It is submitted that all the supplies made to the petitioner were taken by dealers in their outward supply in GSTR1, subsequently the same were reflected in GSTR-2A of the petitioner, thereby the petitioner had availed the input tax credit of the said transaction in the financial year 2017-2018.

6. In respect of this transaction the petitioner received one summon from the Director General of Goods and Services Tax Intelligence, Gurugram (in short 'DGGI') on 09.05.2022. Summons were served upon the petitioner under Section 70 of the CGST Act, 2017 and it was directed to produce the purchase ledger and copy of sale of three vendors for the period July, 2017 to March, 2020.

7. It is pointed out that in course of the said enquiry the petitioner came to know that the three dealers were not available at the time of inspection, in order to avoid any controversy the petitioner company decided to reverse the input tax credit along with interest and penalty.

8. By enclosing a copy of DRC-3 annexed as Annexure-P/4 to the writ application, the petitioner has contended that the petitioner paid a sum of Rs.15,36,770/- on account of ITC reversal of M/s Classic Traders, M/s Manav International and M/s Harshit Trading Company against summon of DGGI (Gurugram Zonal Unit). This Annexure P/4 is not in doubt. The DGGI, Gurugram dropped the proceeding after deposit of tax interest and penalty against wrong averment of ITC.

9. It is stated that after the closure of the proceeding by the DGGI, Gurugram the petitioner received one show cause notice issued by the respondent No. 8 and this show cause notice was also in respect of the financial year 2017-2018 and it was alleged that the petitioner had wrongly availed input tax credit to the extent of a sum of Rs.4,25,358/-. The show cause notice has been brought on record as Annexure-P/5 in the writ application.

10. Learned counsel for the petitioner has taken this Court through the statements made in paragraph-19 to 25 of the writ application to submit that in fact before the learned Assessing Officer of the State the entire facts and figures were brought on record and the Assessing Officer was explained about the proceeding which had taken place before the DGGI, Gurugram in respect of the same invoices which were subject matter of consideration before the Assessing Officer. He was also shown the amount already deposited by the petitioner by way of reversal of input tax credit but despite everything available on the record, the Assessing Officer did not consider the same and pass the impugned order dated 20.05.2024 which is contained in Annexure-P/10 to the writ application. It is this Annexure P/10 which is under challenge in the present writ application.

11. During pendency of the writ application two counter affidavits have been filed on the record. The counter affidavit of respondent No.5 contains at table in paragraph-8. The table reveals name of the fake firm, GSTIN of the fake firm, item, invoice number, invoice date and taxable value. The averments made in the counter affidavit of respondent No.5

would show that the petitioner reversed an ITC of Rs.15,36,770/- (under protest) vide DRC-03 dated14.06.2022. Later on the petitioner had made it clear vide e-mail dated 09.01.2023 that they have inadvertently mentioned “under protest” in the DRC-03. The petitioner clearly stated that they will not claim/protest by way of any litigation against the tax interest and penalty deposited in the Bank.

12. In the counter affidavit filed on behalf of Respondent No.8, however, a plea has been taken that the petitioner failed to substantiate with documentary evidence it’s claim of having reversed fake and non-existent input tax credit availed by it on invoices issued by the non-existent suppliers. The assessing authority has submitted that under these circumstances he was left with no option but to create the impugned demand.

13. In course of argument learned counsel for the State has having gone through the averments made in the counter affidavit of respondent No.5 does not dispute the fact that the amount of tax, interest and penalty deposited by the petitioner by Annexure-P/4 pertains to the transactions under tax invoice no.44 of Harshad Trading company, invoice No. 234 dated 13.01.2018 and invoice no. 235 dated 15.01.2018 of

Classic Trade. It is these three invoices only which are subject matter of the present proceeding.

14. Learned ASG for the respondent No.5 suggests at this stage that perhaps the State authority was not duly explained that these two firms whose invoices were subject matter of consideration before the State authority were also subject matter of consideration before the respondent No.5 and it is in relation to these invoices only the petitioner has paid the amount. A suggestion has been made at the bar that under these circumstances the best course of action would be to send back the matter to the assessing authority.

15. Having regard to the entire materials on the record which have been discussed hereinabove, this Court has iota of doubt that the Assessing authority while passing the impugned order Annexure-P/10 has not considered in right perspective the materials which were brought on the record. In this regard, the petitioner has drawn the attention of this Court towards Annexure-P/6 together with the enclosures which were filed before the State authority to make him appreciate that the invoices which are subject matter of the proceeding before him were earlier the subject matters of the proceeding before the respondent no.5.

16. Be that as it may, this Court is convinced that impugned order contained in Annexure-P/10 cannot sustain as it has been passed without consideration of the materials available on the record.

17. We set aside the impugned order Annexure-P/10 and remit the matter to the respondent no.8 for passing of fresh order keeping in view the entire materials and the discussions hereinabove. Such order shall be passed after giving an appropriate opportunity of hearing of the petitioner through its authorised representative. It is expected that the fresh order shall be passed within a period of two months from the receipt/production of a copy of this order.

18. Accordingly, this writ application stands disposed of.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

Durgesh/-
Shubham/-

U			