

High Court directs the DGGI to transfer entire investigation to State tax authority as proceedings were already initiated by them

The Hon'ble Jharkhand High Court in the case of ***Vivek Narsaria v. State of Jharkhand & Ors. [Writ Petition(T) No. 4491 of 2023 dated January 15, 2024]*** held that since all the proceedings are interrelated, the State Authorities to continue the proceedings as per Section 6(2)(b) of the Central Goods and Services Tax Act, 2017 ("**the CGST Act**") read with *Notification No. 39/2017-Central Tax dated October 13, 2017* and the *clarification bearing D.O.F. No. CBEC/20/43/01/2017- GST(Pt.) dated October 5, 2018*. Further, directed both the Preventive Wing of the CGST and Directorate General of GST Intelligence Wing of the CGST to forward all their investigation carried out against the Petitioner and inter-related transactions to the State Authorities, who shall carry out further proceedings against the Petitioner in accordance with law and also, directed to take decision immediately on de-freezing of bank accounts of the Petitioner.

Facts:

Vivek Narsaria ("**the Petitioner**") is the proprietor of M/s Manish Trading Company and has been engaged in carrying on the business of trading iron and steel and cement since 2017-18. The purchases and sales were duly reflected in the GST returns furnished by the Petitioner and the outward tax liability was adjusted against the Input Tax Credit ("**ITC**") available to the Petitioner.

On March 16, 2023, an inspection was carried out by the Intelligence Bureau of the State Goods and Service Tax ("**SGST**") and issued GST INS-01 after the inspection was concluded. Meanwhile, the Petitioner was served with a notice dated April 10, 2023, by the Preventive Branch of Central Goods and Services Tax ("**CGST**"), Ranchi with a direction to reverse the ITC along with interest and penalty on account of the alleged purchases from the non-existent entity. While both departments were concurrently involved in the proceedings, a search was carried out by Directorate General of Goods and Services Tax Intelligence ("**DGGI**"),

Intelligence Branch of CGST on June 06, 2023. While the summons issued by the SGST (Preventive Wing) and DGGI were to be attended, the Petitioner made certain reversals on different dates vide GST DRC 03, totaling a sum of Rs. 3.42 Crores. Also, the bank account of the assessee has been attached by issuing Form GST DRC-22 and more than 7 Bank Accounts have been frozen.

Given the circumstances, where the Petitioner has received a summons from 3 Departments of GST, the Petitioner has filed a writ petition under this Court, seeking a declaration that the authority who has initiated the proceedings prior in point of time, shall be the only authority to carry out the proceedings.

Issue:

In the event that proceedings are initiated by SGST, and subsequently, the same matter is concurrently adjudicated by CGST and DGGI, may SGST be authorised to continue the proceedings?

Held:

The Hon'ble Jharkhand High Court in ***Writ Petition(T) No. 4491 of 2023 dated January 15, 2024*** held as under:

- Observed that, the entire proceedings were initiated by the inspecting team of SGST, and based upon which, certain deposits have also been made and State has also issued summons and notices from time to time. Hence, the issue is on 'cross-empowerment' viz., Section 6(2)(b) of the CGST Act read with ***Notification No. 39/2017-Central Tax dated October 13, 2017*** and the ***clarification bearing D.O.F. No. CBEC/20/43/01/2017-GST(Pt.) dated October 5, 2018.***
- Opined that, on conjoint reading of the above section, notification and clarification, it clearly denotes and implies that it is a chain of a particular event happening under the Act and every & any enquiry/investigation carried out at the behest of any of the

Department are interrelated. Hence, the issues raised by the Petitioner herein manifestly crystalize that since all the proceedings are interrelated, the State Authorities should continue with the proceedings.

- Opined that, the bank account attachment by issuing GST DRC 22 prior to any determination or finding of any irregular/inadmissible/wrong availment of ITC under Section 83 of the CGST Act, which conflicts with the notification issued by the CBEC from time to time, concerning guidelines for attachment of Bank, terming the same to be an 'arm twisting method' to make the Petitioner succumb to the particular authority.
- Directed that, CGST and DGGI, shall forward all their investigation carried out against the Petitioner and inter-related transaction to SGST, who shall continue with the proceedings from the same stage.
- Held that, CGST and DGGI to make over the entire investigations carried till date to SGST, who shall carry out further proceedings as against the petitioner in accordance with law. Further, directed to SGST to take immediate decision regarding de-freezing of the bank accounts as per Section 83 of the CGST Act. Hence, the writ petition was disposed of.

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