

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(T) No. 1539 of 2021

GTS Coal Sales, through its Proprietor, Gurpal Singh

..... Petitioner

Versus

1. The Directorate General of Goods & Services Tax Intelligence, through its Director General, having its office at West Block-8, Wing No.-6, 2nd Floor, R.K. Puram, P.O. and P.S. R.K.Puram, New Delhi.

2. Additional Director, Directorate General of Goods & Services Tax Intelligence, having its office at West Block-8, Wing No.-6, 2nd Floor, R.K. Puram, P.O. and P.S. R.K.Puram, New Delhi.

3. Senior Intelligence Officer, Directorate General of Goods & Services Tax Intelligence, having its office at West Block-8, Wing No.-6, 2nd Floor, R.K. Puram, P.O. and P.S. R.K.Puram, New Delhi.

4. Bharat Coking Coal Limited (a subsidiary of Coal India Ltd.), through its Chairman-cum-Managing Director, having its office at Koyla Bhawan, Dhanbad, P.O. and P.S. Dhanbad, District-Dhanbad.

5. General Manager (Finance & Accounts), Bharat Coking Coal Ltd., having its office at Koyla Bhawan, Dhanbad, P.O. and P.S. Dhanbad, District-Dhanbad.

..... Respondents

with

W.P.(T) No. 14 of 2021

M/s. Sanjay Udyog Pvt. Ltd., through one of its Directors Shri Sanjay Khemka

..... Petitioner

Versus

1. The Principal Director General, the Directorate General of Goods & Services Tax Intelligence, 1st & 2nd Floor, Wing No.-6, West Block, 08 R.K. Puram, P.O. & P.S. R.K. Puram, Town & District-New Delhi.

2. Additional Director, DGGST (HQ), West Block-8 (Wing No.-6), 2nd Floor R.K. Puram, P.O. & P.S. R.K. Puram, Town & District-New Delhi.

3. The Senior Intelligence Officer, O/o the Directorate General of Goods & Services Tax Intelligence, Zonal Unit, 5th Floor, Telephone Exchange (MTNL) Building, 8-Bhikaji Cama Place, P.O. & P.S. R.K. Puram, Town & District-New Delhi.

4. The Chief Managing Director Bharat Coking Coal Ltd. Block 11 Area Koyla Bhawan, P.O. Nawagarh, Dhanbad.

5. The Chief Managing Director Northern Coalfields Ltd., P.O. Singrauli Collieri, District-Singrauli.

..... Respondents

CORAM: Hon'ble Mr. Justice Aparesh Kumar Singh

Hon'ble Mr. Justice Deepak Roshan

For the Petitioner : Mr. Sumeet Gadodia, Adv. (W.P.(T) No. 1539 of 2021)
Mr. N.K.Pasari, Adv. (W.P.(T) No. 14 of 2021)

For the Resp-DGGI : Mr. Ratnesh Kumar, Adv. (in both cases)

For the Resp-BCCL : Mr. A. K. Mehta, Adv. (in both cases)

10/24.11.2022 Heard learned counsel for the parties.

2. Since issues involved in both these writ applications are common, as such the same are heard together and being disposed of by this common order.

3. The petitioners in both these writ applications have prayed for a direction to refund the involuntarily deposited amount of Rs. 60 lac in W.P.(T) No. 1539 of 2021 and Rs. 47,64,900/- in W.P.(T) No. 14 of 2021 without there being any demand and/or adjudication proceeding.

Both the petitioners have further prayed for a declaration, that the works executed by the respective petitioners pursuant to the work orders given by the Coal Companies should be classified under Chapter Heading No. 9965 of Tariff Rules i.e., 'Goods Transport Agency Services', leviable to tax @ 12%; as against its classification under Chapter Heading No. 9986, being 'Support Services to Mining' which is leviable to tax @ 18%.

In W.P.(T) No. 1539 of 2021, the petitioner had also made an alternative prayer to the extent that a mandamus be issued upon Respondent-Coal Company to reimburse the differential tax @ 6% to the petitioner pertaining to execution of the work pursuant to several works orders especially in view of the fact that Respondent-GST authorities are treating the work performed under the aforesaid works order as classified under Chapter Heading No. 9986 of Tariff Rules i.e. 'Support Services to Mining' and, thus leviable to tax @ 18%.

4. The petitioner in W.P.(T) No. 14 of 2021 is engaged in the business of Transport of Coal and other related works for which petitioner participated in notice inviting tenders (NITs) issued by Bharat Coking Coal Limited (BCCL) and Northen Coalfields Limited (NCL); both the companies being subsidiaries of Coal India Limited.

5. The petitioner in W.P.(T) No. 1539 of 2021 is engaged in the business of Material management and as a Transport Contractor and has carried out the works which is either classifiable as ‘GTA Services’ leviable to tax under the GST regime @ 12% , or ‘Support Services’ relating to mining leviable to tax @ 18%.

6. The brief facts of both these writ applications which are necessary for deciding the core issue is almost common. A search was carried out in the office premises of the petitioner [W.P.(T) No. 1539 of 2021] and as alleged, upon threat of coercion, the petitioner involuntarily deposited an amount of Rs. 60 lakh under protest purportedly under Section 73 (5) of the Act, vide GST DRC-03.

Similarly, a search was also carried out at the business premises of the petitioner [W.P.(T) No. 14 of 2021] and during course of search the petitioner as alleged was forced to deposit Rs. 47,64,900/- involuntarily under Section 73 (5) of the CGST Act, 2017.

7. The main grievance of the petitioner in both the cases is that the respondent- BCCL issued from time to time work orders for execution of the work pertaining to ‘Transportation of Coal’ and after implementation of GST regime, both the petitioners were issued work orders wherein Respondent- Coal Company has classified the said works as under ‘GTA Services’ and provisions have been made for reimbursement of amount of GST in the said work order only to the extent of 12%.

8. Initially learned counsels for the respective petitioners have assailed the action of the respondent tax authorities with regard to search by submitting that the search was invalid and due to force and coercion, both the petitioners have involuntarily deposited the amount with the respondent-revenue.

The other grievance of the petitioners is that only due to agreement between the coal companies and the petitioners they were depositing the tax @ 12% and without any adjudicating order as per procedure enshrined under GST Act the petitioners were forced by the Tax authorities to deposit the amount mentioned hereinabove.

Learned counsel for the petitioners further submits that the case are still under investigation stage and even show cause notice has not been issued; as such this Court may entertain this application holding that the services rendered by the petitioners in favour of the coal companies should be classified under Chapter Heading No. 9965 of the Tariff Rules i.e. 'Goods Transport Agency Services', leviable to tax @ 12% as against the classification under Chapter Heading No. 9986 of the Tariff Rules being 'Support Services to Mining' leviable to tax @ 18%.

9. Counter-affidavit has been filed in both these writ applications. Mr. Ratnesh Kumar, appearing on behalf of the Revenue opposes the prayer of the petitioners for declaring the services rendered by them pursuant to the work orders to be under 'GTA Services'; rather he contended that the writ application should not be entertained at this stage being premature, inasmuch as, the investigation is going on and even show cause notices has not been issued. At this stage, it is very difficult to ascertain the liability.

He fairly admits that the petitioners are cooperating in the investigation and the moment investigation will be completed, show cause notice will be issued against the respective petitioners; however, at this stage any observations with regard to classification of service will hamper the entire investigation.

10. Pursuant to the aforesaid submissions of learned counsel for the revenue, both the petitioners made an alternative prayer, inasmuch as, as per the work orders which have been issued by the Respondent-Coal Companies

to the respective petitioners there was an agreement that the taxes will be reimbursed by the Coal- Companies. Since the petitioners in both the writ applications are paying 12% considering the services as 'GTA-Services', however, if subsequently it will be held that the services of the petitioners pursuant to the work orders given by the Coal- Companies would come under Chapter Heading No. 9986 i.e. 'Support Services to Mining' instead of under Chapter Heading No. 9965 i.e. 'Goods Transport Agency Services', then differential amount of tax which will incur pursuant to any adjudication order passed by revenue; the petitioners should be protected and should be given liberty to raise the differential amount of tax of 6% from the Coal- Companies.

Learned counsel submits that a direction may be issued to the Respondent- Coal Companies to reimburse the differential tax @ 6% to the respective petitioners pertaining to execution of work pursuant to the different work orders (Annexure -7 series in [W.P.(T) No. 1539 of 2021] and Annexure-1 in [W.P.(T) No. 14 of 2021] if the adjudication orders are passed by revenue against the respective petitioners.

11. Having heard learned counsel for the parties and after going through the documents annexed with the respective affidavits and the averments made therein and also the alternative argument of learned counsel for the respective petitioners, we are of the considered view that at this stage any determination on the issue of leviability of tax; whether @ of 12% or whether @ 18 % will certainly hamper the entire investigation as well as the same is not warranted also, inasmuch as, one service which is leviable to 12% comes under Chapter Heading No. 9965 of the Tariff Rules and one service which is leviable @ 18% comes under Chapter Heading No. 9986 of the Tariff Rules. Thus, we are not inclined to interfere in declaring the services of the petitioners in either of the heading at this stage.

However from record, it appears that as per the work orders issued to the respective petitioners the tax which are given by the petitioners are to be reimbursed by the Coal-Company; as such, if in future the revenue holds that the tax for the work done by the respective petitioners comes under Chapter Heading No. 9986 of “Tariff Rule” being ‘Support Services to Mining’ which is leviable to tax @ 18%, then the petitioners would be entitled to raise their claim for the differential tax from the Respondent-Coal Companies.

Hence, if after investigation and subsequent proceedings, adjudication order is passed against the respective petitioners and they are held liable to pay the tax @ 18%; then both the petitioners would be at liberty to raise their claim of the differential amount from respective Coal-companies in an appropriate proceeding before appropriate forum which shall be decided as per law and the agreement/work orders between the parties and verification of documents.

12. With the aforesaid observations, both these writ applications stand disposed of. Pending I.A. in, any, stands disposed of.

(Aparesh Kumar Singh, J.)

(Deepak Roshan, J.)