

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.2530 of 2024 and W.P.(C) No.24358 of 2022

WP(C) No.2530 of 2024

M/s. Satyam Castings Pvt. Ltd., Cuttack Petitioner

-versus-

***Deputy Director, DGGI, Bhubaneswar
and another Opposite Parties***

AND

WP(C) No.24358 of 2022

M/s. Satyam Castings Pvt. Ltd., Cuttack Petitioner

-versus-

***Senior Intelligence Officer, Directorate
General of GST, Bhubaneswar and
nother Opposite Parties***

Advocates appeared in the cases:

For Petitioners : Mr. U.C. Behura, Advocate

***For Opposite Parties : Mr. T.K. Satapathy,
Sr. Standing Counsel (CGST)
Mr. Sunil Mishra,
Standing Counsel (CT and GST)***

**CORAM:
THE CHIEF JUSTICE
MR. JUSTICE S.K. SAHOO**

**JUDGMENT
05.04.2024**

Chakradhari Sharan Singh, C.J.

Since both the writ applications are based on same set of facts and pleadings on record, they have been heard together and

they are being disposed of by the present common order and judgment.

2. We have heard Mr. U.C. Behura, learned counsel appearing on behalf of the petitioner and Mr. T.K. Satapathy, learned Senior Standing Counsel for the Opposite Party-Central Goods and Service Tax (CGST) and Mr. Sunil Mishra, learned Standing Counsel for the CT and GST.

3. The petitioner is a registered dealer under the Goods and Service Tax Act, 2017 (in short, 'GST Act') and is a private limited company registered under the Indian Companies Act. It is also registered as a medium scale industry for manufacture of caste iron products.

4. On 30.03.2022, the Senior Intelligence Officer, Directorate General of Goods and Service Tax, Zonal Unit, Bhubaneswar (opposite party No.1) along with an investigation team had visited the petitioner's place of business and seized certain records and books of accounts available there, under Section 67 of the GST Act on the reasoning that those documents were relevant to the proceedings under the GST Act. It is the petitioner's case that opposite party No.1 had conducted the investigation and seized the

records and accounts for the financial years 2017 to 2021-2022 and then issued summons under Section 70 of the CGST Act, fixing the date of personal appearance on 01.04.2022. It is also the petitioner's case that the accounts for the year 2021-2022 were called upon for verification, which were not available as the date fix of such returns for the financial year commencing 31.03.2021 were not due as on the said date. The purchase figures were not uploaded by the supplier(s) and annual returns would have been due on 30.09.2022 as per Sections 44 and 45 of the Act read with Rules 80 and 81 of the OGST/CGST Act and Rules.

5. Apart from the fact that responding to the said summons, the petitioner had attempted to appear through his counsel with an objection against issuance of summons which was not duly honoured by opposite party No.1, it is asserted by the petitioner that though again an objection against the said summons was sent through registered post, yet another summons was issued under Section 70 of the Act on 23.08.2022 directing the petitioner to appear and produce the required books of account fixing the date of appearance on 30.08.2022. The petitioner, admittedly, did not

appear and again made an objection by registered post asserting that his initial preliminary objection was not given any heed to.

It is the petitioner's further case in W.P.(C) No.24358 of 2022 that as opposite party No.1 did not pass any order on the petitioner's response to the summons issued, even after a lapse of 15 days, he was not in a position to avail any remedy under the provisions of Section 107(1) of the CGST/OGST Act. With a plea that as the opposite party No.1 did not take any decision on the petitioner's legal objection to the summons issued to it, it was not left with any other alternative statutory remedy, it approached this Court by filing the writ application i.e. W.P.(C) No.24358 of 2022 putting to challenge the summons itself.

6. It is, precisely, the case of the petitioner that the action of opposite party No.1 is in violation of the circular issued by the Central Board of Excise and Customs dated 05.10.2018 whereby all the officers of the GST i.e. both the Central and the State Tax authorities are authorized to initiate intelligence based enforcement action against the tax payers irrespective of the administrative assignment of the tax payer to any authority. The authority which initiates such action is empowered to complete the

process of investigation, issuance of show cause notice, adjudication, recovery, filing of appeal etc. arising out of such action. The said circular dated 05.10.2018 provides that if an officer of the Central Tax Authority initiates intelligence based enforcement against a tax payer administratively assigned to the State Tax Authority, the Officers of the Central Tax Authority is required to transfer the case to its State Tax counterpart and would themselves state the case to its logical conclusion. Similar would be the position in case of intelligence based enforcement action initiated by officers of the State Tax Authority against a tax payer administratively assigned to the Central State Tax Authority. Basing on the said circumstance and the provision under Section 6(2)(b) of the CGST/OGST Act, it was the petitioner's case in W.P.(C) No.24358 of 2022 that a verification proceeding being pending before the State Government, the Officers of the Central Tax Authority ought not to have initiated the proceedings with the issuance of the summons.

7. Reliance has been placed on behalf of the petitioner upon a coordinate Bench decision of this Court dated 23.03.2021 in W.P.(C) No.158 of 2020 (*Anurag Suri v. The Directorate*

General of Goods and Services Tax Intelligence and Other) to support its case.

8. It is the specific case of opposite party No.2 in its counter filed in W.P.(C) No.24358 of 2022, apart from the jurisdictional competence behind issuance of notice, that the petitioner avoided to appear against the summons which he was legally duty bound to respond and take such plea as he is taking in the present proceeding before this Court. It has been stated that the petitioner took a plea that the CT Enforcement Range, Cuttack had initiated proceedings under Section 67 of the Act upto the year 2018-19 and they had seized all the books of accounts as per panchanama dated 24.07.2019 which matter was subjudice as on date.

9. It is the case of opposite party No.1, in its counter affidavit filed in W.P.(C) No.24358 of 2022 that the petitioner was running a business on the date of inspection i.e. 31.03.2021 and the inspection which was conducted by the CT & GST Authorities under Section 67 of the Act nearly twenty months ago on 24.07.2019. Relying on Section 67 of the CGST/OGST Act, it has been stated that suppression of any transaction concerning supply of goods/services or suppression of stock or goods can be a valid

reason for initiation of the inspection. The transaction concerning supply of goods/services or the stock of goods on any a specific date is definitely not the same for any other date and the buyers and sellers involved in transactions may be different on each date and manner of maintenance of records on account of money transactions towards purchase/sale may be different in each day. Accordingly, citing an inspection conducted by a State Authority twenty months ago as a reason for dishonouring the summons is untenable in law which is to be looked as deliberate act of non-cooperation in the on going investigation.

10. Controverting the petitioner's stand citing pending proceedings by the State CT & GST under Section 67 of the Act and overlapping of tax periods in the pending case and present case as the ground to transfer the case to a State Authority, it is the case of opposite party No.2 that act of suppression referred to in Section 67 is transaction related and is different on any specific date. Accordingly, the summons relating to inspection under Section 67 cannot be claimed as the same event that had occurred twenty months back whereby certain documents were called for relating to earlier period to find out more about the ongoing

investigation. It has been reiterated that the inspections were conducted nearly twenty months ago and, accordingly, the issues are different, period of operation are different and the documents seized are different for the Central Government Authority (DGGI) and the State Authority (CT & GST) Enforcement. It has also been stated that the investigation initiated by the State CT & GST Authority pertains to M/s. Anamika Enterprises, GSTIN - 21BQQPB8790R1Z0 which was one of the suppliers of the petitioner. Accordingly, the two investigations are entirely different as in the present investigation the DGGI is evaluating clandestine supply by the petitioner during the month of March 2022 and investigation by CT & GST is in reference to receipt of materials from one supplier i.e. M/s. Anamika Enterprises.

11. In the rejoinder to the counter affidavit, the petitioner has denied the averments made by the counter affidavit. According to the petitioner, the disputed summons covers the period of investigation, which is between the commencement of tax periods from July 2017 to April 2022, whereas the summons issued by the opposite party No.1 is regarding disputed materials available for

verification as per the show cause-cum-demand notice is only for the month of March, 2022.

12. It has also been contended in the rejoinder affidavit that in the given case, where most of the materials were seized and retained by the State Enforcement Wing and intimated to the Central Investigation Wing during the course of investigation, any new materials discovered by central investigating concerning that should be transferred to the State Enforcement wing for reaching a logical conclusion by way of examination of both materials with seized books of accounts. The petitioner has also asserted that without awaiting a decision in the present writ application, the opposite party No.1 has issued demand-cum-show cause notice directing him to pay the demand with interest and penalty.

13. It is worthwhile mentioning at this juncture that the second writ petition i.e. W.P.(C) No.2530 of 2024 has been filed challenging the show cause-cum-demand notice dated 29.12.2023 issued by the opposite party No.1 pursuant to the summons issued to the petitioner which was subject matter of challenge in W.P.(C) No. 24358 of 2022.

14. Manifestly, the subsequent show cause-cum-demand notice dated 29.12.2023 is being challenged by the petitioner on the same ground which has been taken to question the summons with reference to the provisions under Section 6(2)(b) of the CGST/OGST Act.

15. Mr. Behura, learned counsel appearing on behalf of the petitioner, has submitted that on conjoint reading of Section 6(2)(b) of the GST Act and DO letter dated 05.10.2018 issued by the Central Board of Excise and Customs ('CBEC' for short), it can be easily culled out that both the investigation wings of the Centre and State are required to coordinate with each other so as to reach conclusive findings of fact regarding evasion of tax if made by a registered dealer, under the GST regime. The same is to be determined under Section 73 or 74 of the CGST/OGST Act with interest and penalty, to be calculated in the manner prescribed under the Act and the rules that is to be counted from the due date of filing of return with the disclosure of turnover of purchase and sale with output tax liability for any tax period or tax periods. He has argued that since the State authorities are already proceeding against the petitioner for investigation for the tax period

01.07.2017 to 18.04.2022, the DGGI cannot conduct a parallel proceeding and investigation for the same tax period. It is his submission that the circular dated 05.10.2018 issued by the CBEC is nothing but a clarification to strike harmonious relationship between both the wings of the two departments. In support of his submissions, Mr. Behura has placed reliance on **Anurag Suri** (supra). He has also placed reliance on the Division Bench decision of Calcutta High Court dated 30.09.2022 in M.A.T. No.1595 of 2022 in the case of **M/s. R. P. Buildcon Pvt. Ltd and another v. Superintendent, CGST & CX, Circle-II, Group-10 and others**. Reliance has also been placed by him on a decision of Delhi High Court in case of **M/s. Indo International Tobacco Ltd. and others v. Additional DGGI and others, (2021) (10) TMI 1223**.

16. Mr. T.K. Satapathy, learned Senior Standing Counsel for the CGST has argued, *per contra*, that the two investigations are on different issues. Whereas the DGGI was investigating clandestine supply by the petitioner during the month of March, 2022 only, investigation by the State CT and GST was with reference to receipt of materials from one supplier i.e. M/s.

Anamika Enterprises. He has placed reliance on another coordinate Bench decision of this Court in case of *Mitambini Mishra v. Union of India and others* reported in (2022) 94 GST 137 (Orissa) wherein the Bench declined to entertain the writ petition at the stage of issuance of show cause notice, with a liberty to respond to the said show cause notice.

17. Similarly, Mr. Sunil Mishra, learned Standing Counsel representing the State of Odisha (CT and GST), while supporting the stand taken on behalf of the DGGI, has argued that the State authority has issued summons to the petitioner on 24.07.2019 for production of books of accounts for the period July, 2017 to July, 2019. He has argued that the subject matter before the State authority is entirely different from the Central authority and, therefore, Section 6(2)(b) of the CGST/OGST Act shall have no application. He has also reiterated that the Central authority has issued show cause-cum-demand notice dated 29.12.2023, on the ground that the petitioner was engaged in clandestine clearance of taxable goods without issuance of any tax invoices. He has relied on a co-ordinate Bench decision of this Court dated 18.11.2022 passed in W.P.(C) No.20996 of 2022 in the case of *Muna Pani v.*

State of Odisha and others to contend that the present writ petition at the premature stage of notice should not be entertained.

18. Before we address rival submissions advanced on behalf of the parties, we consider it proper to refer to the co-ordinate Bench decision of this Court in the case of **Anurag Suri** (supra) on which much reliance has been placed by learned counsel for the petitioner. In the said case, in the counter affidavit filed on behalf of opposite party No.2, it was specifically stated that opposite party No.3 was not aware that the Central agency was seized with the matter. Paragraphs—10 to 12 of the said decision are being quoted herein below so as to distinguish the present case with that of **Anurag Suri** (supra):

“10. Opposite Party No.2 has itself set out in the counter affidavit the copy of the circular dated 5th October, 2018 issued by the CBEC which categorically states that if the officer of the Central tax authority initiates intelligence/enforcement action against a taxpayer, administratively assigned to a State tax authority, then the Central tax authority officers themselves have to further undertake the investigation and take the case to its logical conclusion and ‘would not transfer the said case to its state tax counterpart’.

11. The explanation in para 7.1 of the counter affidavit reads thus:-

“Since no information was available with the Opposite Party No.3 with regard to initiation of action as to the input tax credit under Section 70 by

the CGST Authority, upon receipt of intelligence the Opposite Party No.3 has proceeded to issue notice under Section 74 which is the provision which deals with the input tax credit wrongly availed of.”

12. In other words, the State authorities do not dispute that the circular dated 5th October, 2018 but claim not to have known that the Central tax authority was seized of the matter.”

The Division Bench noted that the period of enquiry as far as Central tax authority was concerned was only from July, 2017 to June, 2018 whereas Opposite Party No.3 had issued a show cause notice specific for March, 2018 and, thus, there was also an overlapping of the periods.

19. Section 6(2)(b) of the CGST Act, 2017 reads as under:

“Section 6 - Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances.—

(1) xxx xxx xxx

(2) Subject to the conditions specified in the notification issued under sub-section (1)

(a) xxx xxx xxx

(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.”

20. There is no ambiguity in the language of Section 6(2)(b) of the CGST/OGST Act, which bars initiation of proceeding by a proper officer under CGST Act where a proper officer under the State Goods and Services Act or the Union territory Goods and Services Tax Act has initiated proceeding on a ***subject matter***.

21. The relevant fact to be borne in mind is the subject matter of the proceeding. If the subject matter of the proceeding is entirely different, there is no bar to the maintainability of the proceeding. What is barred is the initiation of the proceeding on the same subject matter by the proper officer. The words ‘subject matter’ can be equated with words ‘cause of action’. The reason behind barring the initiation of proceeding on the same subject matter by the proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Act seems to be that the possibility of the final decision in the two proceedings being different cannot be totally ruled out which would create confusion. In the case of ***Vallabh Das v. Madan Lal and Ors.*** reported in ***A.I.R. 1970 SC 987***, it is held that the expression ‘subject matter’ is not defined in the Civil Procedure Code. That expression includes the cause of action and the relief claimed.

Unless the cause of action and the relief claimed in the second suit are the same as in the first suit, it cannot be said that the subject matter of the second suit is the same as that in the previous suit.

22. In the present case, the opposite parties have disputed that the proceedings initiated by the officer under the State GST Act and the show cause notice issued by the DGGI relate to the same “subject matter”. It is the specific ground on behalf of opposite party No.1 that the Central GST authority had initiated investigation of suppression of transaction by the petitioner. The DGGI was investigating clandestine supply by the petitioner during the month of March, 2022 only whereas investigation by CT and GST was with reference to receipt of materials from one supplier i.e. M/s. Anamika Enterprises.

23. Be that as it may, in view the nature of the order which we intend to pass in the present matter, we refrain ourselves from recording any definite opinion at this stage that the impugned show cause notice issued by the DGGI is barred or not by virtue of operation of Section 6(2)(b) of the CGST/OGST, Act considering the dispute raised in this regard on behalf of opposite parties No.1 and 2. We see no reason why the petitioner did not respond to the

summons issued by the DGGI taking a plea that it was barred by Section 6(2)(b) of the CGST/OGST Act. Further, in the present case, a show cause-cum-demand notice has already been issued on 29.12.2023. Such being the position, we decline to interfere in the present matter. The petitioner shall have the liberty to respond to the said show cause-cum-demand notice dated 29.12.2023 and take appropriate recourse to the provisions of the CGST Act. Since we have refrained ourselves from expressing any definite opinion as to whether the case of the petitioner is covered by Section 6(2)(b) of the CGST/OGST Act, it would be open for petitioner to take the said plea before the appropriate forum in appropriate proceeding.

24. These writ petitions are, accordingly, disposed of with the liberty as aforesaid.

(Chakradhari Sharan Singh)
Chief Justice

(S.K. Sahoo)
Judge

S.K. Jena/Secy
M. Panda/Secy