IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.158 of 2020

Anurag Suri

Petitioner

Mr. R. P. Kar, Advocate

-versus-

The Director General of Goods and Services Tax Intelligence and others

Opp. Parties

Mr. R.S. Chimanka, Sr. Standing Counsel for Opposite Parties

CORAM: THE CHIEF JUSTICE JUSTICE B. P. ROUTRAY

ORDER

Order No.

- 1. The present petition is by the proprietor of M/s. Sai Marketing which is engaged in trading of iron and scraps and has been assigned with GSTIN number.
 - 2. It is stated that the Petitioner's business premises was impounded by the Director General of Goods and Services Tax Intelligence (DGGSTI), Bhubaneswar Zonal Unit (Opposite Party No.1) and a search was undertaken thereof under Section 67 of the Central Goods and Services Tax Act, 2017 (CGST Act). During the course of search records, documents were seized and summons were issued to the Petitioner under Section 70 of the CGST Act on 31st October, 2018.
 - 3. According to the Petitioner he participated in the proceeding which is still pending.
 - 4. The allegation in the show cause notice issued on 23rd July, 2019 by the Additional CT and GST Officer, Sambalpur-

I Circle was that tax dues has not been paid or short paid or refund has been released erroneously or input tax credit has been wrongly availed or utilized as provided under Section 74 of the Odisha Goods and Services Tax Act (OGST Act). The Petitioner was asked to pay OGST, CGST, interest, penalty to the tune of Rs.1,14,15,935.94. According to the Petitioner he appeared before the State GST authority (Opposite Party No.3) on 24th August, 2019 and submitted that since the Senior Intelligence Officer of the DGGSTI, Bhubaneswar has seized all the documents and issued summons pursuant to which the Petitioner was appearing there from time to time, the proceedings initiated by the Opposite Party No.3 should be kept in abeyance till such time of proceedings before the DGGSTI concluded.

- 5. It is stated that despite the above request, Opposite Party No.3 proceeded to pass an order on 5th November, 2019 under Section 74 of the OGST Act requiring the Petitioner to pay a sum of Rs.1,25,57,922.80 towards OGST, CGST, interest, penalty.
- 6. A separate order was passed by Opposite Party No.3 under Section 74(9) of the OGST Act on the basis of alleged wrong availment of input tax credit (ITC) by the Petitioner and determining the OGST, CGST, interest and penalty to the tune of Rs.1,25,57,922/-.
- 7. One of the principal grounds of challenge is based on the D.O. letter dated 5th October, 2018 written by the Central Board of Excise and Customs (CGST) to all the GST

authorities in which inter alia, it is stated in paragraphs 3, 4 and 5 as under:

- "3. It is accordingly clarified that the officers of both Central tax and State tax are authorized to initiate intelligence based enforcement action on the entire taxpayer's base irrespective of the administrative assignment of the taxpayer to any authority. The authority which initiates such action is empowered to complete the entire process of investigation, issuance of SCN, adjudication, recovery, filing of appeal etc. arising out of such action.
- 4. In other words, if an officer of the Central tax authority initiates intelligence based enforcement action against a taxpayer administratively assigned to State tax authority, the officers of Central tax authority would not transfer the said case to its State tax counterpart and would themselves take the case to its logical conclusions.
- 5. Similar position would remain in case of intelligence based enforcement action initiated by officers of State tax authorities against a taxpayer administratively assigned to the Central tax authority."
- 8. In the present petition the Petitioner has questioned the show cause notice issued by Opposite Party No.3 on 23rd July, 2019, the orders dated 5th November, 2019 under Section 74 of the OGST Act as well as the consequential order under Section 74(9) of the OGST/CGST Act raising a demand for the month of March, 2018 under both the OGST and CGST Act for a total sum of Rs.1,25,57,922.80.
- 9. A counter affidavit has been filed by Opposite Party No.2 in which it is claimed that Opposite Party No.3 was not aware that the Central Government is seized of the matter. In para 7 of the counter affidavit it is stated as under:

- "7. That as to the contention in paragraph 1B of the writ petition that the ground of wrong availment of input tax credit by the date of initiation of proceeding under Section 74 by the State Authority had already been in seisin of Central Government Authority, this deponent on instruction from Opposite Party No.3 submits that the said authority on the date of invocation of power under Section 74 was unaware of any proceeding pending adjudication in respect of disputed input tax credit before the Central Government Authority in exercise of power under Section 70."
- 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 the Central tax authority officer initiates intelligence/enforcement action against 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'. सत्यमेव जयते
- 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.

- 13. As rightly pointed by the learned counsel for the Petitioner that this is not entirely true since on 28th August, 2019 itself, the Petitioner had written to Opposite Party No.3 pointing out that the DGGSTI was already seized of the matter.
- 14. Counsel for the Opposite Parties does not dispute that the circular dated 5th October, 2018 precludes the State GST authorities from proceeding in the matter as long as the Central authorities are seized of it. The only submission by Mr. Chimanka is that the Petitioner should continue to cooperate with the Central GST authorities and appear as and when required by them to do so.
- 15. Learned counsel for the Petitioner states that the Petitioner has already been cooperating and would continue to do so as far as the proceeding initiated by the DGGSTI (Opposite Party No.1) is concerned.
- 16. It may be noted that the period of enquiry as far as Central tax authority is concerned is from July, 2017 to June, 2018 whereas Opposite Party No.3 has issued a show cause notice specific for March, 2018 and, therefore, there is also an overlapping of the periods.
- 18. For the reasons noted above, the Court quashes the show cause notice dated 23rd July, 2019, the impugned order dated 5th November, 2019 including the order dated 4th November, 2019 all passed by Opposite Party No.3 and directs that till the conclusion of the proceeding initiated against the Petitioner by the DGGSTI, no coercive action be taken against the Petitioner by the Opposite Party No.3.

- 19. The writ petition is allowed in the above terms.
- 20. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar) Chief Justice

> (B.P. Routray) Judge

M.K. Panda/K. Majhi

