

(2022) 03 JH CK 0078

In the Jharkhand High Court

Case No : Writ Petition (T) No.7337 Of 2019

Prabha Energy Private Limited

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 08-03-2022

Acts Referred:

Central Goods And Services Tax Act, 2017 — Section 61, 71, 73, 107, 161
Arbitration And Conciliation Act, 1996 — Section 23(4), 29A
Commercial Courts Act, 2015 — Section 12A
Negotiable Instruments Act, 1881 — Section 138(b), 138(c)

Citation : (2022) 03 JH CK 0078

Hon'ble Judges : Aparesh Kumar Singh, J;Deepak Roshan, J

Bench : Division Bench

Advocate : N.K.Pasari, Sidhi Jalan, Darshana Poddar Mishra

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the parties.

2. Writ petitioner approached this Court with multiple reliefs:-

(1) a. For issuance of an appropriate writ, order or directions, directing upon the respondents to show cause as to how and under what circumstances, order has been passed by the Respondent Department in Form GST DRC-07 (Annexure-12), levying tax, interest and penalty to the tune of Rs.1,09,10,755.38/-, on the purported allegation of the petitioner having claimed excess ITC, without affording any opportunity of hearing to the petitioner company. And without looking into the records/online entries from the portal on the petitioner.

b. Consequent upon showing cause if nay, and on being satisfied that the department could not have passed the summary order dated 18.09.2019 u/ r.142, summarily, without following the modalities prescribed under the Act, and without affording any opportunity of hearing to the petitioner, the same be

quashed and set aside, being illegal, arbitrary and bad in law.

c. For issuance of an appropriate writ, order or directions, directing upon the respondents to show cause as to how and under what circumstances, the amount of Input Tax Credit lying in the credit of electronic ledger account, has been blocked by the department. d. Consequent upon showing cause, if any, and being satisfied that the department has acted illegally and arbitrarily in blocking the Input Tax Credit lying in the credit of electronic ledger.

3. As the pleadings of the writ petition show petitioner-company duly registered under the Goods and Services Tax Act, 2017 was subjected to inspection on 1st December 2018 by the Assistant Commissioner of Commercial Taxes and asked to furnish a set of documents before the Deputy Commissioner of Sales Tax on 4th December, 2018 under Section 71 of the JGST Act, 2017. Copy of the inspection report is Annexure-3. According to the petitioner relevant documents such as purchase register with copy of invoices and vender wise detail of GST credit for the period 1st July, 2017 to 31st October, 2018 and stock register for financial year 2017-18, 2018-19 were furnished. However, according to the petitioner as per the agreement with the ONGC and IOCL the project executed by the petitioner was at this stage of installation/erection/commission and as on that date 19th July, 2019 no revenue had been generated. However, petitioner received a summary of show cause notice under GST DRC-01/GST DRC-02 alleging availment of excess Input Tax Credit for the period July, 2017 to September, 2018 proposing to impose tax, interest and penalty to the tune of Rs. 1.09 crores. Petitioner's return were also subjected to scrutiny and GST ASMT-10 was issued in terms of Rule 99 (1) for the period of April, 2018 to March, 2019 which overlaps to the period of DRC-01/ DRC-02 alleging mismatch of GSTR-3B and GSTR-2A. Subsequently petitioner was surprised to receive a summary of the order under GST DRC-07 issued under Rule 142(5) for the period July, 2017 to September 2018. According to the petitioner it filed an application for rectification on 28th September, 2019 under Section 161 of the Act of 2017 and also submitted reconciliation statements for the period of 1st July 2017 to 30th September 2018 in terms of which an amount of Rs. 4.06 lacs was standing towards ITC in favour of the petitioner. According to the petitioner as per the reconciliation statements there is no difference or mismatch or excess availment of ITC. The grievance of the petitioner is that no order has been passed on the rectification application till date while an amount of Rs. 74.20 lacs of ITC remains blocked in its Electronic Credit Ledger since 16th February 2020 till date much beyond the one year period prescribed under rule 86 A of the JGST Act, 2017.

4. Petitioner has inter-alia taken up number of grounds and urged that the writ petition is maintainable on account of violation of principles of natural justice and failure to follow the procedure prescribed in law before passing an adverse order imposing tax, interest and penalty upon the petitioner under Section 73 of the JGST Act. Petitioner has placed reliance on the case of M/s NKAS Service Pvt. Ltd. Vs. State of Jharkhand, W.P.T 2444 of 2021 and submitted that in the

absence of a proper show cause notice alleging the contravention committed by the petitioner as stipulated under Section 73 of the Act no proceedings could have been initiated. Petitioner has also taken a plea that in case the respondents have under taken scrutiny of the return submitted by the petitioner under Section 61 of the JGST Act and issued ASMT-10 showing mismatch or discrepancy in his returns, petitioner was entitled to avail of the statutory period to remove such discrepancy or seek a rectification thereof under Section 161 of the JGST Act. The respondents have kept the application for rectification pending and instead blocked the ITC lying in the Electronic Credit Ledger of the petitioner for more than one year. Therefore, summary of the order contained in GST DRC-

7 (Annexure-12) be quashed and the respondents may be directed to unblock ITC lying in the Electronic Credit Ledger of the petitioner. At the same time the respondents may also be directed to undertake the rectification of the discrepancy as per the reconciliation statements provided by the petitioner. In case the rectification exercise leads to adverse order against the petitioner, he may be allowed the liberty to assail it before the appellate authority under Section 107 of the JGST Act.

5. Learned counsel for the respondent Mr. Darshana Poddar Mishra -AAG-I submits that the department has followed the procedure as prescribed in law before imposing the tax, interest and penalty upon the petitioner. The petitioner has attended the proceedings before the Assessing Officer as per the order sheet enclosed as Annexure- C series but not chosen to file any appeal within the period of three months from the date of the impugned order. The period of limitation for preferring an appeal against the order passed under Section 73 of the Act has expired much before the commencement of the lockdown period for the petitioner to avail of relaxation of the limitation period in terms of the order passed by the Apex Court in the Suo Motu Writ Petition (Civil) No(s). 3/2020 and the subsequent orders passed by the Apex Court from time to time. However, learned counsel for the respondent submits that application for rectification is not maintainable. A review of the order passed under Section 73 cannot be undertaken under Section 161 which the petitioner is actually seeking. It is only for correction of errors apparent on the record. Besides that learned counsel for the respondent submits that the period for passing an order on a rectification application i.e., six months has already expired, as such respondent cannot take a decision on such application against the scheme of the Act.

6. However, on this score on consideration of the submission of the respondents' counsel, it appears that the application for rectification was made by the petitioner on 28th September, 2019 and the six months period stipulated under Section 161 would have expired by 27th March, 2020 before which the lockdown had started across the country. Moreover, the Apex Court vide order dated 23.3.2020 passed in Suo Motu Writ Petition (Civil) No(s). 3/2020 had been pleased to order that period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law and special law whether

condonable or not shall stand extended with effect from 15.03.2020 till further orders to be passed by the Apex Court in the said proceeding. This order was further extended by the order dated 27th April, 2021 in Miscellaneous Application No. 665 of 2021 in SMW(C) No. 3 of 2020, the relevant part of the order is being extracted hereunder:-

"This court took suo motu cognizance of the situation arising out of the challenge faced by the country on account of COVID-19 Virus and resultant difficulties that could be faced by the litigants across the country. Consequently, it was directed vide order dated 23rd March, 2020 that the period of limitation in filing petitions/applications/suits/appeals/all other proceedings, irrespective of the period of limitation prescribed under the general or special laws, shall stand extended with effect from 15th March, 2020 till further orders.

Thereafter on 8th March, 2021 it was noticed that the country is returning to normalcy and since all the Courts and Tribunals have started functioning either physically or by virtual mode, extension of limitation was regulated and brought to an end. The suo motu proceedings were, thus, disposed of issuing the following directions:

"1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.

3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29 A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisions (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and nay other laws, which prescribe period (s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings."

7. It appears from perusal of the order passed by the Apex Court which stands further extended up to 28.02.2022 vide order dated 10.01.2022 that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the period prescribed under Sections 23(4), 29 (A) of the Arbitration and Conciliation Act, 1996, Section 12 A of the Commercial Court Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation not only for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of the proceedings. As such it is not only the delay in filing of suits, appeal, application or any proceedings which stands relaxed for the period 15.03.2020

till 28.02.2022, but even the period of limitation for termination of proceedings. The respondents perhaps are labouring under the impression that since the period of six months contemplated under Section 161 of the JGST Act, 2017 has expired much before they are precluded from deciding the application. It is also evident that the application remained undecided not on account of any fault on the part of the petitioner. The respondents cannot therefore take advantage on their wrong also.

8. In such circumstances, we are of the considered view that the respondents should take a decision on the application for rectification dated 28th September, 2019 pending before them in accordance with law as expeditiously as possible and also taking note of the orders passed by the Apex Court in this regard in *Suo Motu Writ Petition (Civil) No(s). 3/2020*. However, this Court is not convinced that the challenge to the order passed under Section 73 under GST can be entertained in writ jurisdiction since the time limit prescribed for an aggrieved assessee to prefer statutory remedy has expired before filing of the writ petition [See *Assistant Commissioner (CT) LTU Vs. Glaxo Smith Kline Consumer Health Care Limited*, reported in 2020 SCC Online SC 440]. The writ petition was filed on 15.10.2020 much after the period of expiry of the limitation period of three months and the period of limitation of three months for filing appeal had expired before the lockdown started.

9. Needless to say, petitioner if aggrieved by the order passed in rectification application, may have the liberty to avail the statutory remedy under the JGST Act, 2017. The respondents would also take a decision on the issue of unblocking of the Electronic Credit Ledger of the petitioner preferably within a period of six weeks from today as it appears that the same has remained blocked for more than 2 years since 16.02.2020.

10. The writ petition is accordingly disposed of.