

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P (T) No. 3055 of 2022

M/s Usha Martin Limited, Ranchi through its Authorized Signatory
Dhanraj Parihar --- --- Petitioner

Versus

1. Additional Commissioner, Central GST and Excise, Jamshedpur
2. Joint Commissioner, Central GST and Excise, Jamshedpur
3. Commissioner of CGST & CX, Jamshedpur
4. Union of India through the Secretary, Department of Revenue,
Ministry of Finance, New Delhi --- --- Respondents

CORAM: Hon'ble Mr. Justice Aparesh Kumar Singh

Hon'ble Mr. Justice Deepak Roshan

For the Petitioner: M/s Sujit Ghosh, Joybrata Misra,
Ashray Behura, Shubham Gautam, Advocates
For the Resp.-CGST: M/s Amit Kumar, Ashish Kr. Shekhar, Advocates
For the Resp.- UoI: Mr. Prabhat Kr. Sinha, CGC

05/ 18.08.2022 By the impugned adjudication proceeding initiated under Section 73 of the CGST Act, 2017, the Respondent No. 1 – Additional Commissioner, Central GST and Excise, Jamshedpur has disallowed the CENVAT Credit amounting to Rs. 10,21,05,096/- carried forward by filing TRAN-1 in terms of Section 140 of CGST Act, 2017.

2. Learned counsel for the petitioner has raised the question of jurisdiction of the Adjudicating Authority to decide upon the availment of CENVAT Credit by the petitioner under the Pre-Goods and Service Tax regime. Learned counsel for the petitioner has referred to page no. 228 i.e. reply / written submission to the show-cause notice issued in Form GST-DRC-01 dated 08.11.2021 in which at para-6.1, details of pending litigations on the same issue have been provided. He submits that there is a stay of recovery of tax and penalty to the tune of Rs. 5.46 crores and Rs. 3.06 crores relating to the period February 2010 to March 2011 and April 2011 to September 2011 by the learned CESTAT, Kolkata. Service Tax Appeals in relation to other periods such as 2005-06 to 2008-09, August 2008 to January 2010 and October 2011 to March 2012 are also pending before the learned CESTAT. Other proceedings relating to the period April 2012 to March 2013 and April 2016 to June 2017 are also pending before the Commissioner (Appeals).

3. Learned counsel for the petitioner has also referred to Section 73 of the Finance Act, 1994 and Rule 14 of CENVAT Credit Rules, 2004 to submit that any such proceeding for wrongful availment of CENVAT Credit could have been initiated under the said Act only. The Respondent No. 1 - Additional

-2-

Commissioner, Central GST and Excise, Jamshedpur has wrongly assumed jurisdiction and adjudicated upon the issue of availment of irregular CENVAT Credit brought forward from the previous years. Learned counsel for the petitioner has also referred to the repeal and savings section under section 174 of CGST Act, 2017. He submits that these proceedings being inchoate, legal proceedings for recovery of arrears for any such tax surcharge, penalty, interest, etc. which could be levied or imposed under the pre-GST laws as if the repealed Acts i.e. Finance Act, 1994 or Central Excise Act, 1944, had not been so amended or repealed. Learned counsel for the petitioner has also referred to certain decisions in course of his submissions such as **Vikram Cement versus Commissioner of Central Excise, Indore [2006 (197) E.L.T 145 (S.C.) para-3; Raza Textiles Ltd. versus Income Tax Officer, Rampur [(1973) 1 SCC 633, Para-3], Carona Ltd. versus Parvathy Swaminathan & Sons [(2007) 8 SCC 559, Para-27]**. Learned counsel for the petitioner submits that the Adjudicating Authority has wrongly assumed the jurisdiction under section 73 of the Act which does not provide for initiation of proceedings for wrongful availment of CENVAT Credit. There is a distinction between CENVAT Credit carried forward from the previous regime and the Input Tax Credit specifically mentioned in Section 73 of the CGST Act. Based on these submissions, the very jurisdiction of the Adjudicating Authority under CGST Act, 2017 in disallowing the CENVAT Credit available to the petitioner, has been questioned. It is submitted that the proceeding being without jurisdiction any recovery of tax or penalty pursuant thereto would be improper in the eye of law. Learned counsel for the petitioner has therefore, sought interim stay of the recovery of the tax and penalty adjudicated by the Respondent No.1 vide Order-in-Original dated 30.03.2022. Learned counsel for the petitioner submits that since the jurisdiction of the Adjudicating Authority is under challenge, writ petition would be maintainable.

4. Learned counsel for the Respondent CGST Mr. Amit Kumar has opposed the prayer. He has referred to the wordings of Section 73 of CGST Act, 2017 wherein the proper officer is empowered to initiate proceeding for wrongful availment or utilization of Input Tax Credit. However, he seeks and is allowed three weeks' time to file counter affidavit. One week time thereafter is allowed to the petitioner to file reply, if so advised.

5. List the case on 15.09.2022.

-3-

6. In the meantime, no coercive steps be taken against the petitioner in connection with the Order-in-Original dated 30.03.2022 passed in No. 01/CGST/Additional Commissioner/2022 by the Additional Commissioner, Central GST & Central Excise, Jamshedpur (Respondent No. 1) till the next date. Learned counsel for the petitioner undertakes to supply written notes and compilation of decisions as also provisions of law on which they seek to rely, at least three days before the next date. Learned counsel for the Respondents may also do so.

(Aparesh Kumar Singh, J)

(Deepak Roshan, J)

Ranjeet/