

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(T) No. 4899 of 2021

M/s Sidhartha Construction, a partnership firm through
Its Partner Vijay Kumar Jha R/o of Pundag Road, Argora,
Ranchi

-- --- Petitioner

Versus

- 1.State of Jharkhand through the Secretary, Commercial Taxes
Department, Govt. of Jharkhand, Ranchi
- 2.Commissioner of Commercial Taxes, Govt. of Jharkhand, Ranchi
- 3.Deputy Commissioner of State Tax, Ranchi South Circle, Ranchi
4. Assistant Commissioner of State Tax, Ranchi South Circle, Ranchi

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**CORAM: HON'BLE MR. JUSTICE APARESH KUMAR SINGH
HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY**

For the Petitioner : M/s Deepak Kr. Sinha, Rakhi Sharma, Advocates

For the Respondents : Mr. Rahul Saboo, S.C.-I

07/10.05.2022 Heard learned counsel for the petitioner Mr. Deepak Kr. Sinha and
Mr. Rahul Saboo, S.C.-I representing the State.

2. The writ petition has been filed for the following reliefs:

- (a) *“For quashing the ex-parte Order for Cancellation of IR Registration of the Petitioner, contained in Ref. No. 10. ZA201019018277W dated 25.10.2019(Annexure-4), issued by the Assistant Commissioner of State Tax, Ranchi South Circle (Respondent No. 4), whereby the said Respondent No. 4, without affording adequate opportunity to the Petitioner, cancelled the GST Registration Certificate of the Petitioner with effect from 25.10.2019, on the ground of not filing returns for a continuous period of six months by the Petitioner within the prescribed time limit, whereas the fact is that the Petitioner has filed GSTR-1 returns for the period in question, but could not file GSTR-3B returns due to non reimbursement of the differential amount of tax i.e. 8% of the value of work executed w.e.f. 01.07.2017 by Jharkhand Rural Road Development Authority.*
- (b) *For a direction upon the Respondents to immediately a restore the Registration of the Petitioner which is revoked vide Order of Cancellation of Registration dated 25.10. 2019 (Annexure-4) to enable the Clients of the Petitioner to release the outstanding payment, which has been stopped due to cancellation of Registration Certificate of the Petitioner.*
- (c) *For a direction upon the Respondent to accept the belated returns in GSTR-3B of the Petitioner for the period in question and also to allow the Petitioner to deposit the admitted tax in installment, after receiving of the differential amount of tax i.e. 8% of the value of work executed w.e.f. 01.07.2017 from the Jharkhand Rural Road Development Authority and outstanding amount from its Clients, which are stopped due to cancellation of the registration certificate of the Petitioner.*
- (d) *For quashing and setting aside the Notice No. 430 dated 20.10.2020 for the period 2018-19 & 2019-20 (01.12.2018 to 31.07.2019) under Section 79(1)(C) of the Jharkhand Goods and Service Tax Act, 2017, on the Bank of the Petitioner i.e. Bank of India, Church Road, Ranchi, directing it to remit an amount of Rs.15,59,952.00 to the GST Department on account of tax, cess, interest and penalty payable by the Petitioner under the provisions of the above Act, without any*

adjudication and or any assessment nor any opportunity of hearing to the petitioner(Annexure-5).

(e) *For a direction upon the Respondent Department not to take any further coercive action against the petitioner including its client for recovery of any alleged amount.*

(f) *For a direction upon the Respondent Department firstly start an adjudication proceeding under the provisions of the Act for determination of the alleged liability payable by the Petitioner to the Respondent Department.”*

3. The order of cancellation of G.S.T. registration is dated 25.10.2019 and the writ petition has been preferred on 27.11.2021 without any explanation for the delay. The garnishee notice under Section 79(1)(c) of the JGST Act, 2017 bearing no. 430 dated 20.10.2020 has also been challenged after 1 year delay. Learned counsel for the petitioner has sought to assail the order of cancellation of registration on grounds of violation of principles of natural justice and also on merits since according to him the GSTR-3B returns could not be filed for 6 months due to non-reimbursement of the differential amount of tax @ 8% of the value of work executed by the petitioner with Jharkhand Rural Road Development Authority after implementation of the GST Act w.e.f 01.07.2017. However, GSTR-1 return were filed for the period in question.

4. Learned counsel for the petitioner has also sought to press the challenge to the garnishee notice dated 20.10.2020 under Form GST DRC 13 as it has been issued without any show cause notice and without any adjudication. Petitioner has been denied opportunity to defend itself.

5. Respondents have filed counter affidavit and objected to the maintainability of the writ petition on account of non-exhaustion of alternative remedy of appeal under Section 107 of the JGST Act, 2017. Reliance is placed on the judgment rendered by the Apex Court in the case of *Assistant Collector of Central Excise, Chandan Nagar, West Bengal Vrs. Dunlop India Ltd. & Ors.* reported in (1985) 1 SCC 260 and in the case of *United Bank of India Vrs. Satyawati Tandon & others* reported in (2010) 8 SCC 110. According to the respondents, petitioner did not choose to reply to the show cause notice before the adjudicating authority as a result of which registration certificate of the petitioner was cancelled under Section 29(2)(c) of the JGST Act for non-filing of the return for consecutive 6 months. According to the respondents, Section 107(1) of the JGST Act, 2017 provides for appeal within a time prescribed. As per Section 107(4) of the JGST Act,

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limitation period for preferring an appeal is 3 months, which is condonable further up to 1 month. Petitioner having failed to do so, is not entitled to any relief. In such matters no grounds of equity can be claimed.

6. We have considered the submission of learned counsel for the parties. There is un-explained gross delay on the part of the petitioner in approaching this Court in writ jurisdiction. The writ petition has been filed after about 2 years of the passing of the order of cancellation of the GST registration. In view of the judgment rendered by the Apex Court in the case of *Assistant Commissioner (CT) LTU, Kakinada & others Vrs. Glaxo Smith Kline Consumer Health Care Limited* reported in *2020 SCC Online SC 440*, the writ petition should not be entertained after the period of availing the alternative remedy of appeal is long over.

7. Learned counsel for the petitioner submits that since the garnishee notice was issued during the prevalence of lock down period and without any adjudication proceeding, petitioner may be allowed liberty to assail it in a separate proceeding as the petitioner may have the benefit of the extended period of limitation in view order passed by the Apex Court in *Suo Motu Writ Petition (Civil) No. 3 of 2020* taking cognizance for extension of limitation period i.e., order dated 23.03.2020, 06.05.2020, 08.03.2021, 27.04.2021 and 10.01.2022. As such, we are not inclined to entertain the writ petition as regards the challenge to the order of cancellation of GST registration of the petitioner dated 25.10.2019 (Annexure-4). However, petitioner is allowed liberty to raise his cause of action as respects the garnishee notice dated 20.10.2020 issued under Section 79(1)(c) of the JGST Act, 2017 in an independent proceeding, if permissible in law.

8. The writ petition is disposed of accordingly.

(Aparesh Kumar Singh, J.)

(Gautam Kumar Choudhary, J.)