



2023:JHHC:4790-DB

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(T) No. 504 of 2023

M/s Sainik Mining and Allied Services Ltd. having its registered office at Delhi and place of business at Kadru, Ashok Nagar, Ranchi and is represented through its Director Shri Narayan Singh Rathore, R/o Ajmer, Rajasthan --- --- Petitioner

Versus

- 1.The Principal Commissioner of CGST & CX (Audit), Audit Circle, Theme Ranchi, Monitoring Committee, Central Goods & Services Tax & Central Excise (Audit), Ranchi
 - 2.The Deputy Commissioner of CGST & CX (Audit), Theme Audit Circle, Central Goods & Services Tax & Central Excise (Audit), Ranchi
 - 3.The Superintendent of CGST & Central Excise (Audit) (Group-19) Theme Audit Circle, Office of the Commissioner, Central Goods & Services tax & Central Excise (Audit), Ranchi
 - 4.The Superintendent (Adjudication), O/o Deputy Commissioner, Ranchi South Division, CGST & Central Excise, Ranchi
 - 5.The Inspector of CGST & CX (Audit), Theme Audit Circle, Central Goods & Services Tax & Central Excise (Audit), Ranchi
- --- Respondents

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CORAM: HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Petitioner : M/s Kartik Kurmy, Nitin Kr. Pasari, Advocates

For the Respondents : Mr. P.A.S. Pati, Advocate (for CGST)

03/08.02.2023 Defect No.1 is ignored as the petition has been filed both under Article 226 and 227 of the Constitution of India. Regarding defect no.4, it is submitted that relevant part of the audit report supplied to the petitioner has been annexed as Annexure-2, therefore, defect may be ignored. It is accordingly ignored. Learned counsel for the petitioner further submits that defect no.5 and 6 regarding typed copy of certain pages relate to the invoices annexed, which may be ignored as they are in format. They are accordingly ignored.

2. Heard learned counsel for the parties.

3. The writ petition has been preferred challenging the show cause notice dated 30.08.2022 (Annexure-1) issued under Section 74 (1) of the CGST Act, 2017 on the grounds that the Deputy Commissioner of CGST and Central Excise (Audit) Theme Audit Circle, Ranchi- Respondent no.2 has acted on the dictates of the Audit Monitoring Committee. This amounts to abdication of independent application of mind by the proper officer before initiating a proceeding. It is submitted that any adjudication of the impugned show cause notice would be meaningless in the eye of law as the mind of the adjudicating officer is predetermined.



4. Learned counsel for the petitioner has placed reliance on certain judgments in the case of *Siemens Ltd. Vrs. State of Maharashtra [(2007) E.L.T. 168 (S.C.)]* para 10 and in the case of *Orient Paper Mills Ltd. Vrs. Union Of India [(1970) 3 SCC 76]*, para 4 and 5 in support of his contention.

5. Learned counsel for the Respondent CGST has taken a preliminary objection to the maintainability of the writ petition on the ground that it is pre-mature. It is submitted that mere perusal of the impugned show cause notice would show that it is not merely at the dictates of the report of the Audit Monitoring Committee but on independent application of mind to the materials found against the petitioner in respect of suppression of applicable rate of tax in respect of service provided by the petitioner i.e. “support services to other mining n.e.c instead of goods transport services” which are chargeable at different rate of tax.

6. However, after some arguments, learned counsel for the petitioner Mr. Kartik Kurmy seeks permission to withdraw this application in order to participate in the adjudication proceedings. However, he submits that the adjudicating authority may be directed to consider the objections/reply raised by the petitioner on all grounds of law and facts by independent application of mind without being prejudiced by the report of the Audit Monitoring Committee.

7. Having regard to the submission being made by learned counsel for the petitioner, the writ petition is dismissed as withdrawn. Needless to say the adjudicating authority would take into consideration all available grounds of law and facts as raised by the petitioner in his reply with an independent application of mind. Let it be made clear that this Court has not gone into the merits of the case.

(Aparesh Kumar Singh, A.C.J.)

(Deepak Roshan, J.)