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Judgment No.: 046
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Judgment Deals With

Section/Rule	Section 70
Authority	Jharkhand High Court
Case Name	Satyendra Singh Kushwah VS The State of Jharkhand
Dated	05 th October, 2023

Brief Facts:

The petitioner had taken GST Registration on 14.12.2017 and has been providing various Taxable Services to various Service recipients since December, 2017, but has not made payment of GST from January, 2018 to November, 2018 before initiation of the investigation.

It was alleged that the accused deliberately ignored the summons issued by the CGST Department under Section 70 of the CGST Act, 2017 and did not appear at any date against 4 summons issued to the accused. It was also alleged that the accused has violated the provisions of Section 70 of the CGST Act and since the accused did not appear against the summons, proceeding under Section 174 of the Indian Penal Code is initiated against the accused person.

Contention of the Petitioner:

The allegations are made that 4 summons have been issued against the petitioner company, but the details of the said summons have not been mentioned in the complaint petition.

The petitioner-company is engaged in providing services for transportation of coal and with the advent of the GST regime, the petitioner obtained registration in respect of its business carried out in the State of Jharkhand. For the services provided by the petitioner-company, it raised bills for payment to its clients and the said clients being service recipients were delaying in releasing payment to the petitioner-company.

The GST is a complete Code in itself and there are provisions of penalty and thus, Section 174 of the Indian Penal Code is not attracted. The power to summon persons to give evidence and produce documents is prescribed under Section 70 of the CGST Act. As per Section 125 of the CGST Act, 2017, a general penalty is prescribed to the tune of maximum Rs.25,000/- only.

The GST amount to the tune of Rs.5,60,52,391/- has been paid in 3 installments. The summon was replied through letter dated 29.12.2018 issued by the company through its Director that a sum of Rs.1,56,50,520/-

was paid on 05.12.2018 and further 45 days' time was requested for further depositing the GST amount. The letter dated 14.01.2019 was issued by the GST authority, whereby, direction was issued to make full payment of GST amount. Thereafter, total sum of Rs.1.5 Crore was paid on 14.01.2019 and 16.01.2019 and finally total amount of Rs.5,60,52,391/- was paid on 08.02.2019. Thus, the summon has already been replied and there was no occasion on the authority concerned to file complaint case under Section 174 of Indian Penal Code.

Even the Director, namely, Satyendra Singh Kushwah of the said company has been made accused by way of filing amendment petition before the court which was allowed. The statute is not providing any vicarious liability that cannot be imposed. The deposition of the GST amount is accepted by the authority concerned. On these grounds, the cognizance under Section 174 of the Indian Penal Code is bad in law.

Contention of the Department:

The petitioner has failed to comply with summons without lawful excuse and intentionally omit to give evidence or to make statement and to produce the documents and the things mentioned in the schedule.

The authorized representative of the company has not appeared and that is why the complaint case was filed under Section 174 of the Indian Penal Code, which is meant for non-compliance of the direction of the public authority and GST authority is the public authority in view of Section 156 of the CGST Act, 2017.

The petitioner-company is a private limited company and in view of that, Section 89 of the CGST Act is applicable and thus, every person who was looking after day-to-day affairs of the company is liable.

By way of referring Section 135 of the CGST Act, it was submitted that presumption of culpable mental state can be proved only in trial. Once summon is issued and the petitioner has not appeared, in view of that Section 174 of the Indian Penal Code is well maintainable.

Findings & Decision of the Court:

It is crystal clear that so far as the amount of GST is concerned, that has already been deposited. It appears that there is no further proceeding against the petitioner for determination of any tax not paid and that provision is there in Section 73 of the CGST Act, 2017. Thus, it is an admitted fact that the amount in question has already been paid.

The documents on record clearly suggest that summons have been replied, which was also entertained by the authority by way of granting time. Thus, it cannot be said that this is a case of non-compliance of summon issued by the authority concerned.

Considering that the summons were replied which were entertained by the authority concerned, it cannot be said that the petitioners have not complied with the summons, issued by the authority concerned and further there are procedure prescribed under the CGST Act, 2017 for penalty under Section 125 which restricted to a fine of Rs.25,000/- only. To allow continuing the proceeding under Section 174 of the Indian Penal Code against the petitioners will amount to abuse of process of law.

In view of the aforesaid facts, reasons and analysis, the entire criminal proceedings arising out of Complaint Case dated 15.04.2019 including the order taking cognizance dated 19.06.2019, pending in the Court of the learned Judicial Magistrate, 1st Class, Ranchi were quashed.

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