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Judgment No.: 053
Dt.: 20-01-2024



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Judgment Deals With

Section/Rule	Section 6
Authority	Jharkhand High Court
Case Name	Vivek Narsaria VS The State of Jharkhand
Dated	15 th January, 2024

Brief Facts:

The Petitioner is the proprietor of M/s. Manish Trading Company and is carrying on the business of trading of Iron & Steels and Cements, since 2017-18. The purchases and sales are duly reflected in the GST returns furnished by the Petitioner and the outward tax liability is adjusted against the ITC available to the Petitioner.

On 16.03.2023, an inspection was carried out by the Intelligence Bureau of the SGST, and in terms thereof GST INS-01 has been issued and after the inspection is concluded, the GST Officers fixed the date for furnishing books of accounts. An amount of Rs.34.00 lakhs from the Cash ledger of the Petitioner and Rs.06.00 lakhs from the proprietorship firm of his wife were made to deposit. While the proceedings had been initiated by the SGST Department, the Petitioner was served with a notice dated 10.04.2023 by the Preventive Branch of CGST with a direction to reverse the ITC along with interest and penalty on account of alleged purchases from the non-existent entity. While two departments were involved in the proceedings, a search was carried out by the DGGI, Intelligence Branch of CGST on 06.06.2023 and various seizures were made and a Panchnama was also drawn. After the search was carried out by the DGGI Unit, simultaneous Summons were issued vide Summon dated 21.06.2023; 03.07.2023; 07.07.2023; 11.07.2023 and 13.07.2023. Again on 24.07.2023, the residential flat of the Petitioner was searched and the statement of Petitioner's wife and mother namely Mrs. Soni Narsaria and Mrs. Usha Narsaria, were recorded. While the summons issued by the State GST and DGGI was to be attended, the petitioner made certain reversal on different dates vide GST DRC-03, totaling to a sum of Rs. 3.42 Crores.

Under the circumstances, since the petitioner has received summons from 3 Departments of GST, the petitioner has approached the Court, seeking a declaration that the authority who has initiated the proceedings prior in point of time, shall be the only authority to carry out the proceedings.

Contention of the Petitioner:

Undisputedly and undeniably, the entire proceedings were initiated as recent as 16.03.2023 by the inspecting team of State GST and based upon which, certain deposits have also been made and the State has also issued summons and notices from time to time, the last being 01.09.2023 under the signature of Assistant Commissioner, attachment of Bank Accounts by issuing GST DRC-22 has been carried out, exercising powers under section 83, which is in conflict with the notification issued by the CBEC from time to time, concerning guidelines for attachment of Bank Accounts.

Further clarity on the issue of cross-empowerment of State GST and Central GST officers is also visible in a recent letter issued by the CBI being No. CBEC20/10/07/2019-GST dated 22.06.2020.

The petitioner having suo-moto deposited an amount of Rs. 40.00 lakhs and having reversed an amount of Rs. 3.42 crores, clearly goes on to suggest that the petitioner is not fly by the night assessee and has been discharging his statutory obligations under the Act. The attachment of Bank Accounts is bad in law, since the same suffers from the vices of excessive jurisdiction as till date there is no determination of any liability and the petitioner is not in a position to understand as to whom he has to furnish documents or give statement, as the petitioner cannot be made to succumb to the jurisdiction of all the 3 departments.

Findings & Decision of the Court:

Bare perusal of section 6 of the Act, especially Section 6(2)(b), when read with the Clarification dated 05.10.2018, further read with Clarification dated 22.06.2020, when read together, it clearly denotes and implies that it is a chain of a particular event happening under the Act and every & any enquiry/investigation carried out at the behest of any of the Department are interrelated.

The State Authorities has also initiated the same very proceeding for wrong/illegal availment of Input Tax Credit. Undeniably, the proceedings at the instance of State Authorities or the CGST Authorities or the DGGI is at initial stage and the proceedings on the basis of 'Search & Seizure' by the State Authorities, is prior in point of time. Hence, Section 6(2)(b) read with clarification dated 05.10.2018, manifestly crystalizes that since all the proceedings are interrelated, the State Authorities should continue with the proceedings.

With regard to attachment of bank account, The Joint Commissioner of State Taxes was directed to take immediate decision for de-freezing of the bank accounts as there was no emergency that prior to any determination or finding of any irregular/inadmissible/wrong availment of Input Tax Credit, the bank account had to be attached.

The Preventive Wing of the CGST and DGGI Wing of the CGST, shall forward all their investigation carried out as against the petitioner and inter-related transaction to the State Authorities, who shall continue with the proceedings from the same stage, in accordance with law.

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