

**HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) No.226 of 2020

Nayak-VCCL (JV)

----Petitioner(s)

Versus

The Union of India and 4 Ors.

----Respondent(s)

For Petitioner(s) : Mr. S. M. Chakraborty, Sr. Adv.
Ms. A. Pal, Adv.

For Respondent(s) : Mr. B. Majumder, CGC.
Mr. P. Datta, Adv.
Mr. A. De, Adv.

HON'BLE MR. JUSTICE S. TALAPATRA

Order

17/02/2021

Heard Mr. S. M. Chakraborty, learned senior counsel assisted by Ms. A. Pal, learned counsel appearing for the petitioner as well as Mr. P. Datta, learned counsel appearing for the respondent No.5 (the principal respondent). The remaining respondents are the formal respondents. However, Mr. B. Majumder, learned CGC appears for the respondent No.1 and Mr. A. De, learned counsel appears for the respondents No.2, 3 and 4.

02. By means of this writ petition, the petitioner has challenged the direction contained in the communication dated

20.12.2019 [Annexure-6A to this writ petition] whereby the respondent No.5, the Assistant Commissioner, office of the Commissioner, Central Goods & Services Tax, Agartala has informed the respondent No.4 that it has come to their knowledge that the NF Railways Construction has engaged the petitioner namely ECI-NAYAK(JV) for supply of works contract service and accordingly the petitioner and their associates have supplied taxable services attracting payment of GST. On preliminary investigation, it has been found that the petitioner has not filed GSTR 3B return since 01.04.2018 and GSTR 1 return since 01.04.2019 and thus they have not obliged their tax liabilities. It has been further pointed out in that communication dated 20.12.2019 that the petitioners have evaded payment of GST.

03. The petitioner has been alleged of availing Input Tax Credit (ITC) by filing GSTR 1 return till March, 2019. From the preliminary investigation, it has revealed that for non-payment of GST from April, 2018 to March 2019, [usually paid through one Ananta Charan Nayak, Managing Director, Nayak Infrastructure Private Limited not the petitioner], the payable GST has accrued to Rs.6,04,93,876/- approximately. Input Tax Credit (ITC) as availed by the joint venture of M/s. Nayak Infrastructure Private Limited is not consistent with GST.

According to the principal-respondent, the petitioner is ineligible for such credit.

04. By that communication dated 20.12.2019 [Annexure-6A to the writ petition], the respondent No.3 was asked to hold the payment until a clearance is given by the respondent No.5. The petitioner has by filing the writ petition urged this court for directing the respondents No.2, 3 & 4 as represented by Mr. A. De, learned counsel to release the outstanding payment of 'the undisputed final bill as withheld by them in terms of the letter of the respondent No.5 dated 20.12.2019' [Annexure-6A to the writ petition]

05. Mr. S. M. Chakraborty, learned senior counsel has submitted that the factual aspects are not in dispute, there are but some facts which have not been considered by the respondent No.5 and those have been stated in para-13 of the writ petition. For purpose of reference, para-13 of the writ petition is reproduced hereunder:

"13. That, after receipt of that letter of the respondent No.5, the petitioner had to collect all the papers required by the said respondent and submitted the same before him along with their letter dated 03.03.2020 showing the payment of GST towards receipt of the Taxable Supply of Services to M/s Nayak Infrastructure Private Limited along with the said letter. Three sheets of bank statements were also enclosed therewith.

A copy of that letter of the petitioner dated 03.03.2020, along with the copy of the bank statement, is enclosed as Annexure-10."

06. In reply, the principal-respondents have stated that upon the preliminary inquiry it has surfaced appeared that the writ petitioner has irregularly availed Input Tax Credit (ITC) which need to be reversed and tax to be paid with applicable interest. The respondent No.5 a *quasi-judicial* authority is in the process of issuing show-cause notice which would follow the adjudication process after affording reasonable opportunity including the scope of submitting the written reply and personal hearing. It has been further observed by them that what has been stated in para-13 of the writ petition by the petitioner as the purported proof of payment need further verification. This may expand to their associate in the venture. The principal respondent has seriously contended that the petitioner which is a joint venture has not cooperated with the investigation at all.

07. Mr. P. Datta, learned counsel has produced today a copy of the notice issued under Section 74(1) of the Central Goods and Service Tax Act, 2017 whereby the petitioner has been asked to show-cause within 30(thirty) days. It has been also asserted that if the noticee does not appear for the personal hearing on the appointed date, then it will be presumed that they do not have anything to say in their defence and the case will be decided on merit on the basis of evidence on record.

08. Mr. Chakraborty, learned senior counsel has fairly submitted that since the respondent No.5 has launched an inquiry under Section 74(1) of the CGST Act, 2017, the petitioner would definitely respond to that because the petitioner has nothing to conceal. According to Mr. Chakraborty, learned senior counsel this notice is a product of non-appreciation of the materials which are already placed before the respondent No.5.

09. Be that as it may, this court is of the view that since a proceeding under Section 74(1) of the CGST Act, 2017 has been launched by the respondent No.5, that proceeding should be allowed to reach its logical end. But for the contemplative action, due payment of the petitioner is on hold, the respondent No.5 is directed to complete the proceeding within a period of 2(two) months from the date of receipt of the reply from the petitioner without fail.

10. In view of this observation and direction it is useless to keep the writ petition pending and no purpose would be served thereof, inasmuch as if by the final order, is aggrieved, that would give rise to a new cause of action.

In terms of the above, the writ petition stands disposed of.

No order as to costs.

A copy of the notice as served on the petitioner is made part of the record for purpose of future reference.

A copy of the order be supplied to the counsel appearing for parties.



Moumita