

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (T) No. 1846 of 2021

M/s GMT Industries Ltd., a Company incorporated under the Companies Act, 1956, having its Unit at Plot No. 51, Sector-68, IMT Faridabad, Haryana, through its Authorised Signatory Mr. Nirmal Paswan, Son of Bhuneshwar Paswan, aged about 28 years, Resident of Dhawanagar near Big Bazar, Kanke Road, Chandani Chowk, Morabadi P.O. – Jawahar Nagar, P.S. Gonda, Ranchi. Petitioner

Versus

1. The State of Jharkhand
2. The Commissioner of State Taxes, having its office at Project Bhawan, Dhurwa, P.O. Dhurwa, P.O. – Dhurwa, P.S. Jagannathpur, District- Ranchi, Jharkhand.
3. The Joint Commissioner of State Taxes (Administration), Jamshedpur Division, having its office at Near Old Civil Court, Tr. Old Gandhak Road, Subarnrekha Link Road, Sakchi, P.O. & P.S. Sakchi, Jamshedpur-1 (Jharkhand).
4. The State Taxes Officer, Intelligence Bureau, Jamshedpur Division, Jamshedpur, having its office at Near Old Civil Court, Tr. Old Gandhak Road, Subarnrekha Link Road, Sakchi, P.O. & P.S. Sakchi, Jamshedpur-1 (Jharkhand). Respondents

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**CORAM : HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK ROSHAN**

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For the Petitioner : M/s. Nitin Kumar Pasari, Adv.
Ms. Sidhi Jalan, Adv.
Mr. Naveen Toppo, Adv.
Mr. Shubham Choudhary, Adv.
Mr. Gaurav Kaushalesh, Adv.
Mr. Rituraj Safalta, Adv.

For the Respondent : Mr. Ashok Kumar Yadav, G.A.-I, Advocate.

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12/21.12.2022: Heard learned counsel for the parties.

2. The instant writ application has been preferred for following reliefs:-

A) For issuance of any appropriate writ, order or direction, directing upon the respondents to show cause as to how an Officer of the State Taxes could carry out the proceedings under Section 129 of the Act that too, when he is not the proper Officer under the Central Goods & Services Tax Act, 2017, for a inter-

state transaction, necessarily falling under the ambit of Integrated Goods & Services Tax Act, 2017, in view of Section 20 of the said Act, the proceedings, if any, could be carried out only under the Central Goods & Services Tax Act and the provisions of Central Goods & Services Tax Act has to mutatis mutandis apply.

B) For issuance of any appropriate writ, order or direction, for quashing and setting aside the order dated 16.01.2021 passed by the learned State Taxes Officer, Intelligence Bureau, Jamshedpur Division, Jamshedpur, whereby and whereunder, tax and penalty to the tune of Rs. 13,68,000/- has been imposed on the ground that E-way Bill had been cancelled during transit without any finding of evasion of tax, which otherwise is also beyond jurisdiction.

C) Consequently, the amount deposited by the petitioner company for the purpose of release of truck be directed to be refunded to the Petitioner.

3. The brief facts of the case lie in very narrow compass. The Petitioner Company is having its Registered Office at Faridabad, Haryana, and is engaged in the business of manufacture and supply of Tube Mill Equipments and their Rolls. M/s. Tata Steel Ltd., Jamshedpur, issued a purchase order dated 06.05.2020 to the Petitioner Company situated at Faridabad, Haryana, for supply of role set amounting to Rs. 38.00 Lakhs, which was subsequently revised on 25.12.2020. The consignment forming part of the purchase order was dispatched under proper cover of documents including E-way bill bearing no. 341270245954 in truck bearing no. HR 38 Z 6057. While the goods were in transit, the truck was intercepted on 06.01.2021 by the officers of the Investigation Bureau, Jamshedpur, Division for verification/specification and direction to detain the vehicle at Commercial Tax Department, Jamshedpur, was issued in Form GST MOV-02 on the allegation that the documents produced by the driver were prima facie defective and the statement of the truck driver was recorded in Form GST MOV-01 which were issued in the name of truck driver. Order of detention was purportedly issued in Form GST MOV-06 which was never received and a Show Cause Notice in Form GST MOV-07 was also issued

in the name of truck driver. On being informed about the entire incident, the Advocate of the Petitioner Company appeared and claimed the ownership of the goods in transit and explained that the detention of truck was wrong. However, he was directed to appear on the date fixed for hearing on 16.01.2021. The Advocate yet again appeared and submitted that the goods were tax paid goods and the Petitioner Company was unaware as to how and when the E-way bill had been cancelled, when the goods were already in transit. On the very same day, an order was passed by the State Tax Officer under Section 129(1)(A) confirming the tax and penalty, the copy of which was never made available to the petitioner, the copy of which was not made available to the Petitioner Company or the truck driver. In order to get the vehicle along with goods released, the Petitioner Company made the payment of tax and penalty “under protest” informing about the entire incidence to the Learned Commissioner and requested for release of vehicle. The State Tax Officer proceeded to create a temporary GST registration number for the driver at his own accord as he was unable to upload GST DRC-07 and uploaded the same therein. On the ground of there being no evasion of tax and no contravention of Section 129(3) of the Act, the assessee preferred the writ petition. Another challenge has been made to the jurisdiction of State Taxes Officer on the ground that for an inter-state transaction falling within the purview of Integrated Goods & Services Tax Act 2017, the State Tax Officer has no jurisdiction to carry out the proceedings under Section 129 of the Act. Although, the proceeding has been initiated against the truck driver, but since the truck driver is not registered as a dealer and the payment was made by the Petitioner Company, hence, the company has chosen to file the present writ petition being an aggrieved party. Although, the petitioner tried to file an appeal, but since the Registration Number allotted to the truck driver was only valid for a period of 15 days, a letter was written to the Department to enlighten as to how the appeal is to be filed, however, no reply was received for the same.

4. Mr. Ashok Kumar Yadav, learned G.A.-I has filed counter affidavit inter-alia challenging the maintainability of the writ petition, as also on merits and has contended that the efficacious remedy of appeal is available to assessee, since the dispute pertains to questions of fact, the Hon’ble

Court may not entertain the writ petition and relegate the petitioner to prefer an appeal.

5. Having heard learned counsel for the parties and after going through the series of events, as also, taking into consideration that an efficacious alternative remedy by way of appeal is available to the petitioner under Section 107 of JGST Act, we therefore, grant liberty to the petitioner to approach the appellate authority against the impugned order passed under Form GST MOV 09. On his approaching, the State Taxes Officer, Intelligence Bureau, Jamshedpur Division, Jamshedpur shall provide the GSTIN number so that the petitioner can prefer an appeal online. In case the appeal is not accepted online for any technical reasons, he would be at liberty to prefer an appeal manually before the appellate authority. The petitioner shall be at liberty to raise all the issues of facts & law and the grounds available to it in the appeal which shall be decided by the appellate authority in accordance with law.

6. Consequently, the writ petition is disposed of with aforesaid direction and observation. Let it made be clear that this Hon'ble Court has not gone into the merits of the case of the parties.

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

(Deepak Roshan, J.)

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