

Mukesh Kumar Singh Vs Commissioner, Jharkhand Goods and Service Tax

Court: Jharkhand High Court

Date of Decision: Jan. 24, 2025

Acts Referred: Jharkhand Goods and Services Tax Act, 2017 " Section 107(8), 107(12)

Hon'ble Judges: M.S. Ramachandra Rao, CJ; Gautam Kumar Choudhary, J

Bench: Division Bench

Advocate: Deepak Kumar Sinha, Ashok Kumar Yadav

Final Decision: Allowed

Judgement

M.S. Ramachandra Rao, CJ

1) In this writ petition, the petitioner is assailing order dt. 28.02.2022 (Annexure-3) passed by the Joint Commissioner confirming the order dt.

15.12.2020 passed by the 2nd Respondent.

2) Petitioner is registered under the Jharkhand Goods and Services Tax Act, 2017, as an assessee.

3) For the financial year 2018-19, the 2nd Respondent passed an order dt. 15.12.2020 (Annexure-1) that the petitioner has availed excess amount of

Input Tax Credit in GSTR-3B than the amount of Input Tax Credit available as per GSTR-2A for the tax period and the extent of Input Tax Credit

available is Rs.25,53,145.55.

The case of the petitioner

4) According to the petitioner, it had filed appropriate returns and availed appropriate Input Tax Credit by filing GSTR-3B on the basis of invoices and

records, and that the order dt. 15.12.2020 was passed by the 2nd Respondent without issuing any notice to the petitioner and without any information

demanding Rs.25,53,145.55 including interest and penalty on the only ground that there was a difference in GSTR-3B and Auto Populated GSTR-2A.

5) Challenging the said order, petitioner had filed an appeal on 26.03.2021 before the Appellate Authority contending therein that merely because data

of purchase is not reflected in GSTR-2A, it is not a valid ground for denial of Input Tax Credit.

6) According to the petitioner, the Appellate Authority also did not give any opportunity of hearing to the petitioner and even without seeking any

document from the petitioner, passed the order on 28.02.2022 rejecting the petitioner's appeal by giving the only reason "no valid/lawful

document or submission submitted".

7) Case law is also relied upon by the petitioner in support of his pleading that difference between GSTR-2A and GSTR-3B cannot be the sole basis

for denial of the claim for Input Tax Credit while there is an evidence on record to prove that the claim of the Input Tax Credit is bona fide and

genuine.

The stand of the respondents

8) Counter affidavit is filed by the respondents insisting that there was mismatch between the Input Tax Credit available as per GSTR-2A and the

Input Tax Credit as claimed in GSTR-3B by the petitioner.

9) It is contended that the petitioner did not give any reply to notices ASMT-10, DRC-01A or show-cause notice in Form GST DRC-01 and so the

order dt. 15.12.2020 was passed by the 2nd Respondent.

10) It is admitted that the petitioner preferred an appeal to the Court of Joint Commissioner of State Tax (Appeal), Dhanbad Division, Dhanbad, and

that the said appeal came to be rejected on 28.02.2022 (Annexure-3) on the ground that "there was no valid/lawful document or submission

submitted".

11) It is contended that the order passed by the Primary Authority was as per the procedure under the Act.

12) It is also stated that there was no submission by the petitioner during the adjudication or appeal proceedings which indicated that the petitioner was

in possession of documents required for claiming Input Tax Credit and that the petitioner has actually discharged his statutory obligation including

payment of tax to his supplier based on which he has claimed the Input Tax Credit.

Rejoinder filed by petitioner

13) Rejoinder was filed by the petitioner contending that without any notice or prior information, 2nd Respondent had issued ex parte order dt.

15.12.2020.

14) Petitioner further contended that the petitioner had uploaded supporting documents as mentioned at Serial No.18 of GST APL-01 (Annexure-2)

along with Statement of Facts and grounds of appeal.

15) It is reiterated that no opportunity of hearing was provided to the petitioner by the Appellate Authority; and even without seeking any further

documents, the impugned appellate order was passed on 28.02.2022 dismissing the appeal on the frivolous ground that no valid/lawful document or

submission submitted.

Consideration by the Court

16) We have noted the contentions of the parties.

17) The fact that the petitioner had uploaded documents along with the appeal filed before the Joint Commissioner can be seen from Serial No.18 of

Form GST APL-01 along with brief facts and also mentioning several grounds of appeal. The said documents include online reply

ASMT-11 to the ASMT-10 notice.

Therefore, the stand of the respondents that no reply was given to ASMT-10 notice is factually incorrect. Therefore, the order of the 2nd

Respondent is vitiated on account of non-consideration of the same.

18) Under Section 107(8) of the Act, it is duty of the Appellate Authority to give an opportunity to the appellant of being heard.

There is no evidence that such opportunity of hearing was provided to the appellant by the Joint Commissioner.

19) Moreover, under Section 107(12) of the Act, the order of the Appellate Authority disposing of the appeal shall be in writing and shall

state the points for determination, the decision thereon and the reasons for such decision.

A reading of Annexure-3 order dt. 28.02.2022 shows that all these requirements are missing.

Also, there is no evidence to show that the Appellate Authority had asked the petitioner to submit any document and that the petitioner did not submit

the same.

20) Since the order (Annexure-3) passed by the Appellate Authority is in blatant violation of the above provisions of the Jharkhand Goods and

Services Tax Act, 2017, on account of non-compliance with Sections 107(8) and 107(12) thereof , the said order as well as the order of the Primary

Authority (Annexure-1) are both set aside; the matter is remitted to the Primary Authority (Respondent 2) to issue notice of hearing to the petitioner,

consider the documents, such as, ASMT-11 filed online by the petitioner to ASMT-10 notice and then pass a reasoned order in accordance with law.

The petitioner is also permitted to file documents as well as any case law which he chooses to rely on before the Primary Authority. The respondents

shall also pay cost of Rs.25,000/- to the petitioner within four weeks.

21) With the aforesaid directions, this writ petition stands allowed.