

GAHC010125982022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4367/2022

M/S RAJKONWAR AND SONS AND ANR
A PROPRIETORSHIP FIRM HAVING ITS OFFICE AT RATANPUR, EAST
MILAN NAGAR, DIBRUGARH REPRESENTED BY ITS PROPRIETOR SHRI
SANJIB RAJKONWAR, HAVING ITS OFFICE AT EAST MILAN NAGAR, BY
LANE- SUNDARPUR, P.O.- C.R. BUILDING, P.S.- DIBRUGARH, DISTRICT-
DIBRUGARH, ASSAM, PIN- 786003.

2: SANJIB RAJKONWAR
SON OF LATE LAMBIT CHANDRA KONWAR
RESIDENT OF EAST MILAN NAGAR
BY LANE- SUNDARPUR
P.O.- C.R. BUILDING
P.S.- DIBRUGARH
DISTRICT- DIBRUGARH
ASSAM PIN- 786003

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NORTH BLOCK,
NEW DELHI- 110001.

2:THE PRINCIPAL COMMISSIONER
GOODS AND SERVICE TAX
GST BHAWAN A.T. ROAD
KEDAR ROAD
MACHKHOWA
GUWAHATI
ASSAM.

3:THE ASSISTANT COMMISSIONER
GST AND CENTRAL EXCISE AND SERVICE TAX

DIBRUGARH DIVISION
SIBASAGAR ZONE
DIBRUGARH
ASSAM PIN- 786003.

4:THE CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT
GOVERNMENT OF ASSAM
CHANDMARI GUWAHATI-3
ASSAM.

5:PUBLIC WORKS DEPARTMENT (PWD) DEPARTMENT
GOVERNMENT OF ASSAM
CHANDMARI GUWAHATI-3
ASSAM

Advocate for the Petitioner : MS. M L GOPE
Advocate for the Respondent : SC, GST

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

O R D E R

29-06-2022

Heard Ms. N. Hawelia, learned counsel for the petitioners and Mr. H. Gupta, learned Central Government Counsel, for the respondent No.1. Also heard Ms. G. Hazarika, learned counsel appearing on behalf of Mr. S. C. Keyal, learned Standing counsel, GST for the respondent Nos. 2 and 3 as well as Mr. B. Gogoi, learned counsel for the respondent Nos. 4 and 5.

Petitioner No.1 Firm is a Registered Class I-A Contractor with the respondent PWD.

As per the relevant provisions of the terms and conditions of the Contract Agreement between the petitioner and the respondent PWD, the authorities of the PWD deducted Tax at Source from the amount payable to the petitioner. In spite of that, the respondent Good and Services Tax (GST) authorities issued notice to the petitioner regarding discrepancies in the return of GST vide its communication dated 11.03.2022 to which the petitioner replied on 17.03.2022. In spite of that, the respondents in the GST authorities issued notice under Section 61 of the Assam Goods and Services Tax Act, 2017 to the petitioner and lastly on

01.04.2022, the respondents in the GST authorities issued notice under Section 74 (5) of the Goods and Services Tax Act, 2017 to the petitioner demanding an amount of Rs.73,53,362.64/- towards State GST as well as Central GST including interest and penalty.

The petitioner contended that since the respondents in the PWD as required has deducted the Tax payable by the petitioner at Source, including the sales and other levies, duties, royalties, cess, toll taxes of Central and State Governments, local bodies and authorities, as such, the petitioner is not liable to pay any such further amount towards GST, both to the State Government Share as well as Central Government Share for the period from April, 2020 to March, 2021 as being demanded by the respondents in the GST on 01.04.2022.

Issue notice, returnable by **05.08.2022**.

As Mr. H. Gupta, learned Central Government Counsel, Ms. G. Hazarika, learned counsel appearing on behalf of Mr. S. C. Keyal, learned Standing counsel, GST as well as Mr. B. Gogoi, learned counsel have accepted notices on behalf of the respondent Nos.1; 2 and 3; 4 and 5 respectively, no formal notices need be issued to those respondents.

Petitioners shall serve requisite extra copies of this writ petition including the Annexures appended thereto to Mr. H. Gupta, Ms. G. Hazarika as well as Mr. B. Gogoi by tomorrow obtaining necessary acknowledgement from them in that regard.

Till the returnable date (i.e., 05.08.2022), as claimed that the requisite taxes have already been deducted at source by the respondents in the PWD from the bills of the petitioner under the Contract between them, i.e., petitioner and PWD, the respondents in the State GST authorities shall not take any coercive action on the petitioner in terms of the impugned notice under Reference No.ZD1804220001145 dated 01.04.2022 of the Assistant Commissioner of State Tax, Dibrugarh, Sivasagar Zone, Assam (Annexure VII) issued under Section 74 of the GST Act, 2017 to it.

List accordingly.

JUDGE

Comparing Assistant