

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P (T) No. 2148 of 2024

M/s. Ram Constructions, a proprietorship concern, having its place of business at Barkiray, Maheshpur, Pakur, Jharkhand, through its Proprietor, Ram Chandra Saha, S/o Lobin Chandra Saha, aged about 43 years, resident village-Barkiyari, P.O. Barkiyari & P.S. Maheshpur, District-Pakur, Jharkhand.

.....Petitioner

Versus

1. Union of India, through the Secretary, Ministry of Finance, Department of Revenue, having its office at Room No. 46, North Block, P.O. and P.S. North Block, New Delhi-110001.
2. The Central Board of Indirect Taxes and Customs, through its Chairman, Ministry of Finance, Department of Revenue, having its office at North Block, P.O. and P.S. North Block, New Delhi-110001.
3. The Deputy Commissioner of State Tax, Deoghar Circle, Deoghar, P.O. & P.S.-Deoghar, District-Deoghar, Jharkhand.
4. The Superintendent, CGST & CX, Range-Pakur, Division Deoghar, having its office at Hanumat Niwas, Shakrugard, P.O.-Baluagairah & P.S. Sahibganj, District-Sahibganj, Jharkhand.

.....Respondents

CORAM:

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK ROSHAN**

For the Petitioner	:M/s. Nitin Kumar Pasari & Sidhi Jalan, Advocates
For the Resp.-State	: Mr. Ashok Kumar Yadav, Sr. S.C.-I
For the Resp.-U.O.I	: Mr. Anil Kumar, ASGI
For the Resp.-CGST	: Mr. Amit Kumar, Sr. S.C. CGST

03/ Dated: 07.12.2024

1. This application has been filed seeking for the following reliefs:
 - a. *For issuance of an appropriate writ, order or direction, holding and declaring Section 16(4) of the Central Goods and Services Tax Act, 2017 as ultra vires, inasmuch as, it seeks to restrict the availment of Input Tax Credit, within a time frame, which is being violative of Article 14, Article 19(1)(g) and Article 300A of the Constitution of India and also being violative of the basic structure of the Goods and Services Tax Act, 2017.*

- b. For issuance of an appropriate writ, order, direction, holding and declaring the amendment carried under Rule 61(5) of the Central Goods and Services Rules, 2017 inserted vide Clause 4(a) of Notification No. 49/2019 dated 9th October, 2019 issued by Respondent No.-2 Central Board of Indirect Taxes and Customs (Annexure- 5) as ultra vires, by which GSTR-3B has been declared to be a return under Section 39 of the Central Goods and Services Act, 2017 with retrospective effect from 01.07.2017, as being wholly violative of Article 14, Article 19(1)(g) and Article 300A of the Constitution of India as it has the effect of interfering with the vested right of the petitioner to avail Input Tax Credit.*
- c. For issuance of a writ, order or direction in the nature of Prohibition, commanding the Respondents, their servants, agents and subordinates to forbear from giving any effect and acting on the basis of or in furtherance of the provisions of Section 16(4) of the Act and the rules made and notifications issued there under in any purported proceedings there under and from levying or collection of any tax on the basis thereof.*

d. For issuance of an appropriate writ, order, direction for quashing and setting aside the order dated 31.01.2023 along with DRC-07 dated 10.10.2023 (Annexure-2).

2. Heard both sides.

3. In view of Clause (5) of Section 16 inserted by the Finance (No.2) Act, 2024, with effect from 01.07.2017, the respondents are directed to allow the petitioner to take Input Tax Credit in respect of delayed returns filed for the Financial Year 2017-18, and the interest and penalty levied on the petitioner by the respondents shall be refunded with 6% p.a interest from the date of such collection till the date of repayment.

4. Accordingly, this writ petition stands disposed of.

(M. S. Ramachandra Rao, C.J)

(Deepak Roshan, J.)

Fahim/Amardeep