



IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (T) No. 1624 of 2024

M/s R.K. Transport & Constructions Limited, a Public Limited Company registered under the provisions of the Companies Act, 1956 and still subsisting in the Companies Act, 2013 having its branch office at 1st floor, Shop No.106, C/o Saurabh Raj, B.B. Complex, Kanke Road, P.O. & P.S- Kanke Road, District-Ranchi-834005 represented through its Authorized Signatory Sri Ujjal Kumar Chatterjee, age about 59 years, son of Trisul Chatterjee, resident of Satabdinagar, Ismiel, Near Homeopathy College, Asansol (m Corp.) P.O. & P.S. Asansol, Barddhaman, West Bengal 713301

... Petitioner

Versus

1. The State of Jharkhand through its Secretary, Commercial Tax Department, having its office at Project Building, Dhurwa, P.O. and P.S. Dhurwa, Ranchi-834004, District-Ranchi.
2. Commissioner, Commercial Taxes department, having its office at Utppad Bhawan, Kanke Road, P.O. and P.S.-Gonda Thana, Ranchi
3. Joint Commissioner of State Tax, Ranchi Division, Ranchi having its office at behind Civil Court Campus, Sales Tax Building, P.O.-G.P.O. and P.S.- Kothwali, District:- Ranchi
4. Deputy Commissioner of State Taxes, Ranchi West, Ranchi having its office at behind Civil Court Campus, Sales Tax Building, P.O.-G.P.O. and P.S.- Kothwali, District:- Ranchi.
5. Deputy Commissioner of State Taxes, Hazaribagh Range, Hazaribagh having its office at opposite Civil Court Campus, Sales Tax Building, P.O. and P.S.- Sadar, District: Hazaribagh.
6. M.B. Enterprises, through its Proprietor – Satish Kumar, having its office at Akhara Chock Near Siv Mandir, ward no. 11 Kumrang Khurd, P.O- Kasiyadih, P.S.-Tandwa, District:- Chatra, Jharkhand.

... Respondents

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJESH SHANKAR**

For the Petitioner: Ms. Amrita Sinha, Advocate

Mr. Akash Bhushan, Advocate

For the Respondents: Mr. Ashok Kumar Yadav, Sr. S.C.-I

Mr. Bhola Nath Rajak, Advocate

Reserved on: 11.06.2025

Pronounced on: 13/06/2025

Per M.S. Ramachandra Rao, C.J.

1. The petitioner is engaged in the business of loading, unloading and transportation of coal and is registered under the Goods and Services Tax
2. Petitioner availed service of rental/hiring of commercial motor vehicle from the 6th respondent during the period October 2020 to March 2021 and the 6th respondent is also registered under the GST Act.



3. The 6th respondent for the said period 2020-21 had raised six different Invoices/Vehicle External Charges Bills for Rs.73,34,569/- which included SGST and CGST amount of Rs.11,18,832.58. These bills are filed by petitioner as Annexure-1 (colly).

4. Petitioner contends that it cleared all the invoices as can be seen from the Bank' statement of account at Annexure-2 (colly) along with the applicable taxes.

5. Petitioner contends that the GST paid by it to the 6th respondent against the supply of rental/hiring service of commercial motor vehicle was not being shown in the GSTR-2A and on enquiry, the petitioner came to know that the 6th respondent had not filed GSTR-01 and, therefore, the tax paid by the petitioner to 6th respondent was not reflected in the GSTR-2A, due to which the petitioner was unable to avail and utilize Input Tax Credit of Rs.11,17,703/- while discharging its Output Tax Liability and, thus, a huge financial burden was cast on it.

6. Petitioner contends that in spite of legal notice dt. 26.11.2021 (Annexure 3) and legal notice dt. 06.01.2022 (Annexure 4) issued by it to the 6th respondent to file GSTR-01, it has not done so.

7. Petitioner also contends that it gave representations dt. 20.01.2022 (Annexure 5) and 11.03.2022 (Annexure 5/1) to the official respondents informing them about the conduct of the 6th respondent, but they have not taken any action against him, even though they were obligated to do so under Section 76 of the Jharkhand GST Act, 2017.

8. Petitioner had previously filed W.P. (T) No. 2665 of 2022 in this Court to initiate proceedings under the GST Act, 2017 against the 6th respondent for collecting tax from the petitioner, but not depositing it to the Government exchequer for the financial year 2021 and illegally holding the



tax which resulted in denying of input tax credit the petitioner, but the same was disposed of on 19.07.2022 by this Court directing the petitioner to approach the official respondents by making a fresh representation and thereafter the petitioner had given two representations on 10.08.2022 and 18.11.2022, and since there was no action on behalf of the official respondents, the instant writ petition was filed.

9. The official respondents (Respondents 1 to 5) state that the 6th respondent falls within the jurisdiction of the Central GST authorities and no action can be initiated as against the 6th respondent by the official respondents.

10. This stand taken by the official respondents is contrary to Section 76 (1) of the Jharkhand GST Act,2017 which mandates that '*every person who has collected from any other person any amount as representing GST, and had not paid the said amount to the Government, shall forthwith pay it to the Government*' and if he does not do so, under subsection (2) thereof, '*the proper officer may direct him through a notice to show cause as to why the said amount as specified in the notice should not be paid by him to the Government, and why a penalty equivalent to the amount specified to the notice should not be imposed on him under the Act*'. Thus action can be taken under subsection (2) of section 76 against 'every person' including a person not registered under the JGST Act, 2017, if he does not, having received JGST from the petitioner, file any return under GSTR-01 and does not remit the same to the official respondents.

11. Therefore, it is not permissible for the official respondents to contend that they need not do anything since the 6th respondent is registered with the CGST authorities. It is their bounden duty to take action against the



6th respondent under sub-section (2) of Section 76 forthwith and there is no valid excuse for its inaction.

12. They also cannot contend that petitioner had no *locus standi* to file the writ petition because the petitioner has filed material to show that as per the invoices/bill (Annexure-1 (colly)) raised by 6th respondent, it had made payments supported by bank records (Annexure-2 (colly)) including the GST to the 6th respondent which he has not shown to have passed on to the Government.

13. The 6th respondent has also not stated in his counter affidavit that it had passed on to the State of Jharkhand, the tax collected from the petitioner as per the invoices Annexure-1 (colly) raised by it on the petitioner and which had been paid by the petitioner.

14. A totally false plea is raised in its counter affidavit to the effect that it is not liable for paying tax under the GST Act. If the 6th respondent was not liable to pay any tax under the JGST Act, 2017, why in the invoices raised by it i.e., Annexure-1 (colly), it had included the CGST and JGST components, is not explained by it.

15. The further plea raised by the 6th respondent that the instant writ petition cannot be entertained because the petitioner had previously filed W.P. (T) No. 2665 of 2022, and that the principle of *res judicata* is attracted is wholly untenable because there was no final adjudication on merits in the previous writ petition, because in the order passed in the said writ petition on 19.07.2022 therein, the petitioner was only directed to approach the official respondents and there was no adjudication on the merits.

16. In this view of the matter, this writ petition is allowed, with costs of Rs.1,00,000/- (Rupees One Lakh) to be paid by the 6th respondent to the petitioner within eight weeks; and the Respondents 1 to 5 are directed to



initiate proceedings under Section 76 the Jharkhand GST Act, 2017 against Respondent 6 for collection of the tax from the petitioner and not crediting it to the Jharkhand State Government during the financial year 2020- 2021 and withholding the tax amount which is due to the Government, thereby preventing petitioner from claiming input tax credit of the amount so paid. This exercise shall be completed within eight weeks from the date of receipt of a copy of this order.

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

(Rajesh Shankar, J.)

N.A.F.R.

Manoj/-

