IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No. 1052 of 2019

M/S H.P. Biswas & Company through its Partner Aloke Kumar Biswas S/O Late H.P. Biswas, aged about 60 years, resident of Ajanta Para, Hirapur, P.O., P.S & District- Dhanbad.

... ... Petitioner

Versus

1. M/S. B.C.C.L. through its C.M.D., Koyla Bhawan, P.O. Koyla Nagar, PS. Saraidhela, District- Dhanbad.
2. General Manager Area No. IV, M/S BCCL, Katras Area, P.O. & P.S. Katras, District- Dhanbad.
3. General Manager (Civil) M/S BCCL Koyla Bhawan, Koyla Nagar, P.O. Koyla Nagar, PS. Saraidhela, District- Dhanbad
4. Area Civil Engineer, Area No. IV, M/S BCCL, Katras Area, P.O. & P.S. Katras, District- Dhanbad.
5. Area Finance Manager, Area No. IV, M/S BCCL, Katras Area, P.O. & P.S. Katras, District- Dhanbad.
6. Union of India through Control Board of Excise and Customs, Ministry of Finance, Department of Revenue, New Delhi.

... ... Respondents

CORAM : SRI ANANDA SEN, J.

For the Petitioner(s) : Mr. Saibal Kumar Laik, Advocate

For the Respondent(s) : Mr. Prashant Kumar Singh, DSGI
Mr. Karbir, Advocate
Mr. Rajeev Agarwal, Sr.Advocate
Dr. Ashok Kr. Singh, Advocate

<u>13/22.07.2026:</u>

By way of filing this writ petition, the petitioner has sought for the following reliefs :-

> *"For quashing /setting aside the order dated 1.2.2019 passed by Respondent no.2 whereby and whereunder the claim of petitioner for reimbursement and refund for an amount of Rs.18,25,269/- which has been deposited by M/S H.P. Biswas & Company under the head "Service Tax" with respect to work of diversion*

of Kumari Jore (balance work) under the Katras Area of M/S BCCL, has been rejected (Annexure 13).

AND

For issuance of an appropriate Writ/Direction in the nature of mandamus commanding upon the Respondents to reimburse. Rs.18,25,269/ (Rs. Eighteen Lakh Twenty Five thousand Two hundred Sixty Nine) only which has been deposited by the petitioner as Service Tax in respect of work of Diversion of Kumari Jore (Balance Work) -under Katras Area of BCCL vide Work Order No. BCCL/CED/GM(C)/W.O-11/14-15/461 dated 9/10.7.2014, as per provision stipulated in the Agreement."

2. Heard learned counsel representing the petitioner and learned counsel representing the respondents.

3. Facts of the case are as follows:-

3.1. The petitioner being a partnership-Firm was awarded a contract for the work of "Diversion of *Kumari Jore* (Balance Work) under *Katras* Area, BCCL" for a total value of Rs.7,43,49,975.38/-, by the Bharat Coking Coal Limited (BCCL) under Work Order bearing Reference No.BCCL/CED/GM(C)/WO-11/2014-15/461 dated 09/10.07.2014, after being declared successful in the bidding process, in reference to NIT Ref. No.BCCL/CED/TC/NIT-65/2012-13/1463 dated 11.03.2013 and LOA Ref. BCCL/CED/GM(C)/LOA-52/2013-14/2042 dated 29.03.2014.

3.2. Thereafter, an Agreement was also entered between the parties.

3.3. The petitioner also paid the service tax, which is evident from the ST-2 Form, having Service Tax Code (Registration Number) – AACFH5614HSD001 dated 11.11.2016 (Annexure-3 to the writ petition). The petitioner had deposited Service Tax to the tune of Rs.18,25,269/- against 1st R.A. Bill. The work was completed on 08.06.2015.

3.4. The petitioner requested the respondent Authorities by filing various representations to reimburse the service tax of the petitioner, but the same has not been reimbursed to the petitioner-Firm.

3.5. Being aggrieved by the non-reimbursement of the service tax, the petitioner moved before this Court vide W.P.(C) No.1350 of 2018, which was disposed by a Coordinate Bench of this Court vide order dated 13.09.2018 with a liberty to file a fresh representation before respondent No.2 – the General Manager Area No. IV, M/s BCCL, Katras Area, Dhanbad, and the respondent No.2 was also directed to consider the case of the petitioner and pay the amount of the petitioner, on finding the same to be genuine.

3.6. The respondents issued a letter to the petitioner-Firm for personal hearing on the claim of reimbursement of service tax and thereafter several pleadings have been exchanged between the parties.

3.7. Ultimately, respondent No.2, issued the impugned order bearing Ref. No.BCCL/GM/KA/IV/19/2162 dated 01.02.2019 (Annexure13 to the writ petition), rejecting the claim of the petitioner for payment of service tax with respect of the work of "Diversion of *Kumari Jore* (Balance Work) under *Katras* Area, BCCL".

4. Learned counsel representing the petitioner-Firm submits that the impugned order rejecting the claim of the petitioner for payment of service tax after completing the agreed work and adhering with the norms of the Agreement, is liable to be condemned being marred by violation of the terms of contract and contractual obligation. He further submits that no proceedings ever have been initiated by the Service Tax Department against the petitioner and the petitioner has also given an undertaking that it has not claimed or received reimbursement of the said amount of tax from any other authority or organization. On the aforesaid background, withholding of the reimbursement amount by the respondent – Bharat Coking Coal Limited, is illegal and unjustified. He further submits that the impugned order is also contrary to the earlier direction issued by this Court, as a result of which the petitioner-Firm is suffering financial hardship.

5. Learned counsel representing the respondents submits that under Rule 4(7) of the CENVAT Credit Rules, 2004, CENVAT credit of input services could be availed only within one year from the date of invoice. The petitioner obtained Service Tax registration after substantial delay and deposited the Service Tax after completion of the work, due to which BCCL became ineligible to claim Central Value Added Tax Credit. He further submits that the petitioner was required to obtain registration and issue proper tax invoices under the Service Tax Rules, 1994, but they failed to comply with the statutory requirements and also did not provide necessary certificates regarding any pending proceedings. Therefore, the rejection of the petitioner's claim by order dated 01.02.2019 was justified, lawful, and in accordance with the contract and applicable tax provisions. There is no proceeding against them, as there is a special bar under the CENVAT Credit Rule as it was appearing in the Erstwhile regime. He submits that the Assessee upon the direction of the Service Tax Audit team, deposited the amount, which was made after the cut-off date, thus the same was rejected, as there is no provision in the GST Act as well as in the Erstwhile Service Tax Act.

6. Union of India was made a party to this petition. They were directed to file counter affidavit. In their affidavit, they admitted that no proceeding was initiated against the petitioner under G.S.T. Act. The fact of deposition of G.S.T. amount by the petitioner, with the Authority was also not disputed.

7. After hearing all the parties and upon perusal of the records, I find that the dispute raised by the petitioner primarily arises out of the contractual terms contained in the Work Order and Agreement executed between the petitioner and BCCL. The petitioner seeks enforcement of the contractual obligation regarding reimbursement of Service Tax. The respondents have disputed the claim only on the ground that due to the delayed registration and payment of Service Tax by the petitioner, BCCL cannot avail the benefit of CENVAT credit, thus reimbursement was refused. It is their case that since the G.S.T. regime has started from 01.07.2017, and BCCL will not get the credit now, so it is not possible for them to reimburse the amount to the petitioner.

8. It is an admitted position that the petitioner has completed the work as per the prescribed norms and time schedule pursuant to the work order. Further, the petitioner has also complied with the condition of payment of service tax and a receipt of acceptance has also been issued in his favour. The details of payment of service tax have been supported by the enclosures annexed with this writ petition and the same has already been mentioned out in the foregoing paragraphs. This fact is admitted by the respondents also.

9. Perusal of Clause-14 of the Work Order dated 09/10.07.2014 (Annexure-1 to the writ petition), indicates that all the taxes will be borne by the Contractor save and except the service tax of Rs.18,25,269/- and the same is liable to be reimbursed. Clause-14 reads as hereunder:-

> *"14. The contractor shall be liable and pay all Indian taxes, duties, levies, lawfully assessed against the owner or the contractor in pursuance of the contract* ***except service tax which will be reimbursed to the contractor on actual basis as per prevailing norms.****"*

10. Further, Clause-ix of the Agreement No.8 of 2014-15 reads as under:-

> *"ix) All taxes, levies, cess, royalties, whether local, municipal, provincial or central pertaining to the contract are payable during the entire periods of contract, shall be to the contractor/ contractors account and shall be deemed to have been included in the contracted rate for the work to be executed by the contractor excluding the service tax. The Company shall not be liable for any taxes or levies etc. whatsoever except service tax in connection with this contract."*

11. In the present case, the claim of the petitioner for reimbursement of Service Tax depends upon interpretation of the contractual terms as well as the effect of statutory provisions relating to CENVAT credit. The respondents have taken a specific stand that due to the petitioner's delayed registration and payment of Service Tax, BCCL now cannot avail the corresponding credit, so the petitioner cannot be reimbursed.

12. The prejudice is caused by coming into force of the GST Act w.e.f. 01.07.2017 and there is no prejudice from either of the parties. So far as the concession granted to the petitioner-Firm is concerned, the concession is only restricted by the event if there is a proceeding. There is no express curtailment of the concession because of the change of regime from CENVAT to GST. If there is no curtailment and there is no specific bar, the claim of the person who is claiming the credit is not ousted by law the same cannot be wiped out.

13. Further, admittedly there is no proceeding against the petitioner. After coming of the GST regime, it cannot be said that all the credits which were there prior to that, stands wiped out. The only embargo is that there should not be any proceeding and the respondents admit that there is no other embargo. Any facts relating to completion of work, payment of GST is not denied, hence the same are admitted. The Union of India is only relying on Section 140 of the GST Act.

14. For the sake of reference, it is necessary to quote Section 140 of the GST Act, which reads as hereunder:-

> *"**140. Transitional arrangements for input tax credit.—**(1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit 2 [of eligible duties] carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law 3 [within such time and] in such manner as may be prescribed:*
>
> *Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:—*
>
> *(i) where the said amount of credit is not admissible as input tax credit under this Act; or*
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> *(ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or*
>
> *(iii) where the said amount of credit relates to goods manufactured and cleared*

under such exemption notifications as are notified by the Government.

(2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day 3 [within such time and] in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act.

Explanation.––For the purposes of this sub-section, the expression "unavailed CENVAT credit" means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

(3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012—Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock

and inputs contained in semi-finished or finished 1 [goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to] the following conditions, namely:––

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iii) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;

(iv) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and

(v) the supplier of services is not eligible for any abatement under this Act:

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

(4) A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 (1 of 1944) or provision of taxable as well as exempted services under Chapter V of the

Finance Act, 1994 (32 of 1994), but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger,—

(a) the amount of CENVAT credit carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and

(b) the amount of CENVAT credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with the provisions of sub-section (3).

(5) A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the 2 [existing law, within such time and in such manner as may be prescribed], subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day:

Provided that the period of thirty days may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding thirty days:

Provided further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.

(6) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished 3 [goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to] the following conditions, namely:––

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is not paying tax under section 10;

(iii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iv) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of inputs; and

(v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

(7) Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as 1 [credit under this Act, within such time and in such manner as may be prescribed, 2 [whether the invoices relating to such services are received prior to, on or after, the appointed day]].

(8) Where a registered person having centralised registration under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of CENVAT credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day 3 [within such time and in such manner] as may be prescribed:

Provided that if the registered person furnishes his return for the period ending with the day immediately preceding the appointed day within three months of the appointed day, such credit shall be allowed subject to the condition that the said return is either an original return or a revised return where the credit has been reduced from that claimed earlier:

Provided further that the registered person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act:

Provided also that such credit may be transferred to any of the registered persons having the same Permanent Account Number for which the centralised registration was obtained under the existing law.

(9) Where any CENVAT credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such 4 [credit can be reclaimed within such time and in such manner as may be prescribed, subject to] the condition that the registered person has made the payment of the consideration for that supply of services within

a period of three months from the appointed day.

(10) The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed."

15. As per the respondents, reimbursement was not processed, as registration of the petitioner has been made in April-May, but GST was implemented in July and the tax regime has changed, therefore, the respondent-BCCL are denying the credit to the petitioner.

16. The aforesaid plea of the respondents for denying the CENVAT credit of the petitioner cannot be accepted as there should be a specific and unambiguous clause to the effect that if it is not done within the prescribed period, he will not be entitled to any relief. There is not a single provision which can suggest that there can be a debarment.

17. In the counter affidavit filed on behalf of respondent No.6 – Union of India, at para-7, it is stated that there is no proceeding pending and nothing has been initiated against the petitioner in terms of Rule 9 (bb) of the CENVAT Credit Rules, 2004.

18. Learned counsel representing the respondent – Union of India, also buttress his submission while relying upon para-8 and 9 of the counter affidavit. Para-8 and 9 of the counter affidavit reads as hereunder:-

"8. That it is humbly submitted that under Rule 4(7) of the CENVAT Credit Rules, 2004, as applicable from 01.03.2015, CENVAT credit on input

services could not be taken after one year from the date of issue of the invoice/bill/challan specified under Rule 9(1). Thus, for an invoice dated 22.12.2016, the credit should have been availed on or before 21.12.2017.

9. Further, with the introduction of GST on 01.07.2017, eligible CENVAT credit under the old regime was required to be transitioned through Section 140 of the CGST Act, 2017 (TRAN-1 mechanism and related provisions) . Credit that was not validly availed or transitioned within the prescribed framework cannot now be claimed as fresh CENVAT credit. Hence, CENVAT credit cannot be freshly availed as on date under the erstwhile CENVAT Credit Rules, 2004."

19. The Hon'ble Madras High Court in the case of ***Ganges International Pvt. Ltd. Vs. Assistant Commr. Of GST & C. Ex., Puducharry*** reported in ***2022 (66) G.S.T.L. 186 (Mad.)***, has dealt with the issue of granting CENVAT facilities. Para-41 to 48, held as hereunder:-

"41. Merely because, the transitional provision has come into effect from 01.07.2017 and under Section 140(1) of the Act, the persons like the petitioners can make a claim only in respect of the credit which is already accrued as on 30.06.2017 and these credit had come into the account of the petitioners only subsequently, for which, claim under Section 140(1) could not have been made, the chance of making such an application to seek the refund or otherwise of such a credit which has subsequently accrued in the account of the petitioners, cannot be denied.

42. In that view of the matter, this Court feels that, in these kind of special situations, for which, the provision if not Section 142(3), no other eligible provision is available. Therefore, this Court feels that, since it is a dire necessity, as these kind of situation necessarily to be met with by the Legislation, for which, these transitional provision has been brought in in the Statute Book, there can be no impediment for invoking Section 142(3) of the Act by invoking the "Doctrine of Necessity".

43. Normally, the theory of "Doctrine of Necessity" could be invoked when there is a dire necessity with regard to the forum, before whom, the issue has to be referred to and disposed and decided by such forum. Earlier the view was that, it would apply only to judicial matters but in ***Mohapatra and Company and another Vs. State of Orissa and another [1985] 1 SCR 322****, it was held that "the doctrine of necessity applies not only to judicial matters but also to quasi-judicial and administrative matters".*

44. The "Doctrine of Necessity" though would be applied only with regard to the forum or the authority by whom it shall be decided, here, since it is a transitional period from the erstwhile tax regime to the present GST regime, where, the available provisions are to be best utilised by the taxpayers, it become imperative in order to meet the special situation as the one discussed above, to have a forum, for which, the available legal provision of the Act viz., GST Act, 2017 can very well be invoked. The "Doctrine of Necessity" has been best explained ***in (1996) 4 SCC 104, Election Commission of India***

and another Vs. Dr.Subramaniam Swamy and another *and also in* ***(2006) 3 SCC 276 in State of U.P. Vs. Sheo Shanker Lal Srivastava and others****. In a Division Bench judgment of High Court of Delhi in the matter of* ***Duncan Agro Industries Limited Vs. Union of India*** *reported in* ***1988 (18) ECC 358****, the [1985] 1 SCR 322, Mohapatra Company case has been followed.*

45. Therefore, though normally the "Doctrine of Necessity" would only be invoked for want of forum, here in the case, it also can be construed that, if Section 142(3) is not permitted to be invoked in meeting situations like this, that situation would render that taxpayer remediless, hence, here also the "Doctrine of Necessity" can be invoked, in the considered opinion of this Court.

46. Since the language used in Section 142(3) of the Act is refund claim, the petitioner has made application for refund claim. However, under the erstwhile law, since the petitioners are not entitled to get any refund claim and their eligibility is confined only by taking the credit under Cenvat Credit Rules, beyond which, the relief cannot be stretched upon. Moreover, the Cenvat credit facilities which is a concession and if at all that concession has to be availed by the petitioners, that concession can be availed only in the manner known to law, for which, only credit facility can be adopted and therefore, the question of making any refund by way of cash as provided under Section 142(3) does not arise in this case, as, for which, the petitioners since have not been eligible or entitled to, that kind of claim cannot be made by the petitioners.

47. But at the same time, the petitioners application atleast could have been considered by the respondents under Section 142(3) of the Act for the purpose of taking the credit and such credit could have been considered and allowed for carrying forward in the electronic credit ledger of the GST regime which is nothing but a different route than Section 140 and that is the only possibility for dealing with these kind of applications. Hence, this Court has no hesitation to hold that, the reasons stated by the respondents in these cases in passing the orders impugned to reject the claim made by the petitioners are not tenable or these reasons would not stand in the legal scrutiny, in view of the legal position which have been discussed herein above.

48. For all these reasons, this Court, having considered the peculiar facts and circumstances of the case, is inclined to dispose of these writ petitions with the following orders:

> *"(i) That the impugned orders in these writ petitions are liable to be set aside, accordingly are set aside. As a sequel, the matters are remitted back to the respondents for reconsideration. While reconsidering the same, the authority concerned, who has to deal with the applications of the petitioners, shall consider and dispose of these applications under Section 142(3) of the CGST Act, 2017.*
>
> *(ii) While reconsidering the said applications, the claim made by the petitioners need not be considered for the purpose of refund of the claim made by them. However, the said claim made*

> *by the petitioners can very well be considered for the purpose of permitting the petitioners to carry forward the accrued credit to the electronic credit ledger of the GST regime.*
>
> *(iii) After considering the said applications, as indicated above, the necessary order shall be passed by the respondents within a period of six weeks from the date of receipt of a copy of this order. It is made clear that, before passing the orders as indicated above, an opportunity of being heard shall be given to the petitioners, so that the petitioners can put forth their case by providing all necessary inputs to the satisfaction of the authorities to take a decision thereon."*

20. Further, it is pertinent to mention here that the petitioner – Firm got registered under the G.S.T. Act on 11.11.2016. They claimed the reimbursement on 18.05.2017, whereas the GST was introduced on 01.07.2017, which is after the claim raised by the petitioner.

21. In view of the above, the petitioner is entitled to get the reimbursement, and just because of some technical ground, the petitioner is being denied. The technical ground is that GST was introduced from 01.07.2017.

22. However, considering the submission of the respondents that reimbursement of Service Tax was linked with availability of credit to BCCL, this Court is of the view that once BCCL grants the benefit of such Service Tax to the petitioner, as reimbursement, they are entitled to get the credit of the same. The benefits to the parties cannot be denied merely on technical grounds.

23. Thus, the impugned order bearing Ref. No.BCCL/GM/KA/IV/19/2162 dated 01.02.2019 (Annexure13 to the writ petition) is hereby set aside.

24. The respondent – BCCL is directed to verify and process the petitioner's claim for reimbursement of Service Tax in accordance with the terms of the agreement. The BCCL will get the credit of the reimbursed amount of Service Tax. Union of India will ensure extending the credit to BCCL immediately. Entire process should be concluded within twelve weeks.

25. With the aforesaid observations and directions, this writ petition stands **allowed**.

(ANANDA SEN, J.)

22nd July, 2026
Prashant. Cp-2

A.F.R.

Uploaded on 01.08.2026