



2023:DHC:8631-DB



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 05.12.2023

+ **W.P.(C) 16353/2022**

**LOVELESH SINGHAL PROP
SHIVANI OVERSEAS**

..... Petitioner

versus

**COMMISSIONER, DELHI GOODS AND SERVICES
TAX & ORS.**

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. A. K. Babbar & Mr. Surender Kumar,
Advs.

For the Respondents : Mr. Rajeev Aggarwal, ASC with Ms.
Shilpa Singh, Adv. for R1, 2 & 3.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, praying that directions be issued to the respondents to refund the amount of ₹18,72,000/-, which was deposited by the petitioner during the course of inspection/search conducted at his premises. The petitioner also prays that the order dated 07.10.2022 (in form INS-01) authorizing the search/inspection under Section 67 the Central Goods and Services Tax, 2017 (hereafter '**the CGST Act**') read with Rule 139 (1) of the Central



Goods and Services Tax Rules, 2017 (hereafter '**the CGST Rules**'), be set aside. In addition, the petitioner prays that the search of his business premises and seizure effected, be declared illegal.

FACTUAL CONTEXT

2. The petitioner is an individual and is engaged in the business of trading of PVC Resin under the name of M/s Shivani Overseas. The petitioner is registered under the CGST Act and has been assigned the Goods and Services Tax Identification Number (**GSTIN**): 07AAYPS1178H1Z0.

3. On 07.10.2022 continuing till early hours of 08.10.2022, a search was conducted by respondent no.3 at the petitioner's business premises being Property No. 66, 3rd floor, Pocket-13, Sector-24, Rohini, Delhi and 3411/249, 2nd floor, Hansa Puri, Tri Nagar, Delhi, under Section 67 of the CGST Act. This was on the basis of authorization dated 07.10.2022 (in form GST INS-01), issued by respondent no.1 in terms of Rule 139(1) of the CGST Rules.

4. During the course of the search operation, documents pertaining to the period FY 2017-18 to 2021-22 were inspected. The petitioner alleges that during the course of the inspection, the visiting team of officers forced him to reverse the Input Tax Credit (ITC) amounting to ₹18,72,000/- in respect of supplies purchased from one M/s Samridhi Exports. The petitioner was informed that the GST registration of the said supplier was cancelled retrospectively. The petitioner states that he



was detained in the office from 4 pm of 07.10.2022 to 2.30 am of 08.10.2022. It is contended on behalf of the petitioner that during this time, the petitioner succumbed to the intimidation of the visiting team and was compelled to transfer the aforementioned amount of the ITC.

5. The statement of the petitioner (Mr. Lovelesh Singhal, Proprietor of M/s Shivani Overseas) was recorded on 07.10.2022. He denied mismatch of GSTR1 & GSTR3B, GSTR 2A & GSTR3B for the period 2017-2018 to 2022-2023 and undertook to furnish the reconciliation, in case there was any mismatch attributable to ITC availed by the petitioner.

6. The respondents issued a show cause notice dated 29.03.2023 (hereafter '**the SCN**') to the petitioner under Section 74 of the CGST Act bearing reference no. ZD070323012878C, proposing a demand of ₹17,83,28,150/- (i.e., CGST and SGST of ₹3,22,91,278/- each) including interest of ₹4,91,63,038 and penalty for a sum of ₹6,45,82,556/- for the period of April 2022 to February 2023.

7. The petitioner is contesting the SCN and has filed the present petition being aggrieved by the failure on the part of the respondents to refund the amounts, which he claims was deposited involuntarily and under duress, during the course of search.

SUBMISSIONS

8. The petitioner impugns the proceedings initiated under Section 67 of the CGST Act, *inter alia*, on the ground that the authorization for



search is vague and imprecise. It is contended that the proper officer issuing the authorization (in Form INS 01) had no reason to believe that the petitioner had suppressed any transactions relating to supply of goods/services and/or had suppressed transactions relating to the stock of goods in hand or had claimed ITC in excess of its entitlement under the CGST Act.

9. The petitioner also impugns the proceedings for collection of ₹18,72,000/- by compelling the transfer of the said amount from the petitioner's Electronic Credit Ledger (ECL). As noticed above, it is the petitioner's case that he was coerced into filing Form DRC-03 and debiting the available ITC under duress and coercion without adjudication of any liability or any demand, in accordance with law.

10. The learned counsel for the petitioner also relied on the decision of the Tripura High Court in ***Dayamay Enterprise v. State of Tripura and 3 Ors.: WP(C) No. 89/2021***, decided on 22.02.2021, whereby the Court had set aside a show cause notice on the ground that it was vague and imprecise. He also referred to the decision of the Madras High Court in ***M/s Shri NandhiDhall Mills India Private Limited v. Senior Intelligence Officer and Ors.: W.P.No.5192/2020***, decided on 07.04.2021, whereby in similar facts, the Madras High Court had directed the concerned authorities to refund an amount of ₹2,00,00,000/-, which was allegedly paid under coercion.



11. The petitioner also referred to the decision of the Gujarat High Court in *M/s Bhumi Associate v. Union of India: Manu/GJ/0174/2022*, decided on 16.02.2021, whereby the Court had issued directions to be followed for collecting tax in proximity to the search and seizure operations. The learned counsel also relied on the decision of the Coordinate Bench of this Court in *M/s Vallabh Textiles v. Senior Intelligence Officer and Ors.: 2022 SCC OnLine Del 4508*, whereby this Court had respectfully concurred with the directions issued by the Gujarat High Court in *M/s Bhumi Associate v. Union of India (supra)* and had found that the required procedure had not been followed in that case. Accordingly, the Court had directed the refund of the tax deposited by the taxpayer involuntarily along with interest at the rate of 6%.

12. Mr. Rajeev Aggarwal, learned counsel appearing for the respondents countered the aforesaid contentions. He submitted that it was well recognised that the taxpayer was entitled to make voluntary payment of tax to avoid penalty and interest. He stoutly contested the claim that the deposit of tax by debiting ITC from the ECL was involuntary. He further submitted that the petitioner had made a statement admitting to the liability, which was not retracted. He also referred to the decision of the Kerala High Court in *Suresh Kumar P.P. and Ors. v. The Deputy Director, Directorate General of GST Intelligence (DGGI) and Ors.: MANU/KE/2191/2020*, whereby the court had rejected a similar prayer on the ground that the tax deposited



was voluntary. He submitted that the Special Leave Petition preferred by the taxpayer against the said order was also rejected by the Supreme Court¹.

13. He also referred to the decision of the Coordinate Bench of this Court in *M/s RCI Industries and Technologies Ltd. Through its Director Rajeev Gupta v. Commissioner DGST Delhi & Ors.: 2021 SCC OnLine Del 3450*. In that case, the Court had rejected the contention that the statement was recorded under coercion as the same had not been retracted. Lastly, he referred to the decision of the Gujarat High Court in *S.S. Industries v. Union of India: Manu/GJ/1609/2020*, whereby the High Court had denied the relief claimed on similar grounds for the reason that the controversy raised involved disputed questions of fact.

REASONS AND CONCLUSION

14. The first and foremost question to be addressed is whether the search conducted in the premises of the petitioner under Section 67 of the CGST Act was illegal. As noted above, the petitioner claims that the search was illegal as the authorization for search dated 07.10.2022 was imprecise and vague.

15. Section 67(1) of the CGST Act enables the proper officer to authorize any officer of the central tax to inspect any place of business

¹ Order dated 07.01.2021 Suresh Kumar P.P. and Ors. v. The Deputy Director, Directorate General of GST Intelligence (DGGI) and Ors.: MANU/SC/0291/2021



of a taxable person or persons engaged in the business of transporting goods where he has reason to believe that; (a) the taxable person has suppressed any transaction relating to supply of goods or service or both; (b) suppressed the stock of goods in hand; (c) claimed ITC in excess of his entitlement; or (d) has indulged in contravention of any of the provisions of the CGST Act or the CGST Rules made thereunder, to evade tax.

16. In terms of Rule 139(1) of the CGST Rules authorization under Section 67(1) of the CGST Act is required to be issued in Form GST INS-01. The said Form is reproduced below:

“FORM GST INS-1

AUTHORISATION FOR INSPECTION OR SEARCH

[See rule 139(1)]

To

.....

.....

(Name and Designation of officer)

Whereas information has been presented before me and I have reasons to believe that—

A.

M/s. _____

☐ has suppressed transactions relating to supply of goods and/or services



- ☐ has suppressed transactions relating to the stock of goods in hand,
- ☐ has claimed ITC in excess of his entitlement under the Act
- ☐ has claimed refund in excess of his entitlement under the Act
- ☐ has indulged in contravention of the provisions of this Act or rules made thereunder to evade tax under this Act;

OR

B.

M/s. _____

- ☐ is engaged in the business of transporting goods that have escaped payment of tax
- ☐ is an owner or operator of a warehouse or a godown or a place where goods that have escaped payment of tax have been stored
- ☐ has kept accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act.

OR

C.

- ☐ goods liable to confiscation / documents relevant to the proceedings under the Act are secreted in the business/residential premises detailed herein below
<<Details of the Premises>>

Therefore,—

- ☐ in exercise of the powers conferred upon me under sub-section (1) of section 67 of the Act, I authorize and require you to inspect the premises belonging to the above mentioned person with such assistance as may be necessary for inspection of goods or documents and/or any other things relevant to the proceedings under the said Act and rules made thereunder.



☐ in exercise of the powers conferred upon me under subsection (2) of section 67 of the Act, I authorize and require you to search the above premises with such assistance as may be necessary, and if any goods or documents and/or other things relevant to the proceedings under the Act are found, to seize and produce the same forthwith before me for further action under the Act and rules made thereunder.

Any attempt on the part of the person to mislead, tamper with the evidence, refusal to answer the questions relevant to inspection / search operations, making of false statement or providing false evidence is punishable with imprisonment and /or fine under the Act read with section 179, 181, 191 and 418 of the Indian Penal Code.

Given under my hand & seal this day of
(month) 20.... (year). Valid for day(s).

Seal

Place	Signature, Name and designation of the issuing authority
-------	---

Name, Designation & Signature of the Inspection Officer/s

(i)

(ii)''

17. It is apparent from the above that Clause (A) of the said Form sets out various reasons on the basis of which conduct of search may be authorized. The proper officer is required to select the relevant reason



for authorizing a search under Section 67(1) of the CGST Act. In the present case, the proper officer has issued the authorization in Form INS-01 setting out all the reasons as stated in Section 67(1)(a) of the CGST Act and all the reasons (except the taxpayer claiming refund in excess of his entitlement) as set out in Clause A for issuing such authorization. Thus, there may be some merit in the grievance of the taxpayer that the proper officer has not set out any specific reason but has merely reproduced all reasons on the basis of which an authorization under Section 67(1)(a) of the CGST Act could be issued. However, it is seen that the reasons as set out are connected.

18. The respondents have not referred to any specific reason for initiating the proceedings under Section 67 of the CGST Act, in their counter affidavit, except to state that the reasons to believe were duly recorded on the file prior to conducting the search and the inspection. It was also stated that the show cause notice is yet to be issued as the investigation is not complete as yet.

19. The only allegation as stated in the counter affidavit is that the petitioner has availed of ITC in respect of purchases made from certain specified suppliers (five in number) during the relevant period claiming an aggregate ITC of ₹6,48,41,211/-. However, the registration of the said suppliers had been cancelled from the date prior to the date of purchase. Thus, it does appear that in this case, the inspection was authorized on the ground that the petitioner had wrongfully availed of ITC in respect of supplies from other entities.



20. It is apparent that the cancellation of registration of the suppliers with retrospective effect does have a rational nexus with reason to believe that ITC in respect of supplies from such suppliers may not be available. Sufficiency of reasons is not subject to judicial review. It is well settled that so long as there is a rational basis supplying the reasons to believe that any of the requisite grounds for conducting the inspection/search exist, no further enquiry is necessary. In the present case, we are unable to accept that the authorization for conducting search or inspection under Section 67 of the CGST Act is illegal for want of reasons to believe that the grounds for conducting the said search as set out in Section 67(1)(a) of the CGST Act, exist.

21. The next question to be examined is whether the petitioner is entitled to reversal of the ITC that was debited from his ECL. As noted above, according to the petitioner, he was coerced to make the deposit of tax by debiting the ECL at 2:06 am on 08.10.2022.

22. According to the respondents, the concerned officers of the department had reached the principal place of business as well as other additional places of business at about 4 pm on 07.10.2022. The respondents state that the petitioner provided access to its additional place of business at 3411/249, 2nd floor, Hansapuri, Tri Nagar, Delhi but the relevant documents were not available at the said place. Accordingly, the officers had insisted that the access to the principal place of business (Property No.66, Third Floor, Pocket-13, Sector-24, Rohini, Delhi), which was closed, be provided. The respondents have



averred in their counter affidavit that the “*Petitioner also requested not to break open or seal the premises as it would bring bad name to its business and the Petitioner requested the Officers to wait at the additional place of business at Tri Nagar till the time keys got arranged by some family member at 12:30 AM.*” According to the respondents, the survey and inspection at the principal place of business began after 12:30 am and was concluded at 02:30 am on 08.10.2022.

23. Admittedly, the petitioner had deposited a sum of ₹18,72,000/- at 2:06 am by debiting the ECL. Concededly, the search and inspection proceedings were continuing at the material time.

24. In the given facts, we are inclined to accept the petitioner’s claim that the deposit was made under duress and in compelling circumstances. The petitioner had been subjected to the search/inspection operations way beyond the normal business hours. Admittedly, the petitioner was called upon to provide copies of various books of accounts. The statement recorded on the said date – which is also relied upon by the respondents – clearly indicates that the petitioner had provided several documents to the concerned officers including the Trading Account for the period 01.04.2022 to 07.10.2022; Cash Book for the period 01.10.2022 to 07.10.2022; Stock group summary as on 07.10.2022; copies of the last purchase and sale bills; profit and loss account for the period 01.04.2021 to 31.03.2022; and parties ledger.



25. It is important to note that the said statement does not indicate that there was any admission that the petitioner had wrongfully availed ITC.

26. Undisputedly, a taxpayer has an option to voluntarily pay tax on a self-ascertainment basis prior to issuance of a show cause notice. In terms of Section 73(5) of the CGST Act, a person chargeable to tax may before service of a notice under Section 73(1) of the CGST Act or prior to the statement under Section 73(3) of the CGST Act, pay an amount of tax along with interest payable thereon under Section 50 of the CGST Act and inform the proper officer of such payment in writing. In such eventuality, in terms of Section 73(6) of the CGST Act, no notice is required under Section 73(1) of the CGST Act to be served by the proper officer in respect of the tax paid or any penalty payable under the provisions of the CGST Act. However, in terms of Section 73(7) of the CGST Act, if the tax paid falls short of the tax payable, the proper officer can issue the show cause notice in respect of the shortfall. Subsections (5), (6) and (7) of Section 73 of the CGST Act are set out below:

“73. Determination of tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.—

xxx

xxx

xxx

(5) The person chargeable with tax may, before service of notice under subsection (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of



his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the CGST Rules made thereunder.

(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable”

27. It is clear from the above that the provisions of Sub-sections (5) and (6) of Section 73 of the CGST Act are for the benefit of a taxpayer who voluntarily pays tax on his own ascertainment prior to issuance of any show cause notice and thus, absolves himself of liability to pay penalty in respect of the tax paid. Sub-section (5) of Section 74 of the CGST Act is in somewhat similar terms except that the taxpayer is also required to pay penalty equivalent to 15% along with tax deposited on the basis of his own ascertainment. The provisions of Sub-sections 73(5) and 74(5) of the CGST Act are not provisions under which the Department can compel a taxpayer to deposit tax.

28. Given the scheme of permitting the taxpayers to voluntarily deposit tax prior to issuance of notices (either under Section 73 or Section 74 of the CGST Act) to avail of the benefit of absolving themselves from the liability to pay penalty either in entirety or in



excess of 15% of tax payable as the case may be; in cases where the said tax is collected under coercion, the same is required to be returned.

29. It is not necessary to examine in detail any controversy whether such payments were made voluntarily. Clearly, where a taxpayer turns around and states that the payments had not been made involuntarily and the circumstances *prima facie* indicate so, the taxpayer must be granted the benefit of withdrawing such payments. Obviously, in such cases, the taxpayer would forfeit immunity from levy of any penalty and the concerned authorities are not precluded from proceeding against the taxpayer in respect of any default and to the full extent as permissible under law.

30. It is relevant to note that the payment of tax on a self-ascertainment basis would necessarily require acceptance of the grounds on which such payments had been made. In the present case, it would be necessary for the petitioner to acknowledge the underlying liability on account of which the tax is paid. This is also required to be acknowledged by the respondents.

31. However, in the present case the petitioner has disputed that he is liable to pay any tax. There is no determination of the petitioner's liability to pay tax. Clearly, in such circumstances, the tax deposited by the petitioner cannot be considered as voluntary and within the scheme of Section 73(5) of the CGST Act.



32. It is also important to note that the requisite procedure under Rule 142 of the CGST Rules has also not been complied with. Admittedly, the respondents have not issued any acknowledgement accepting the payment made by the petitioner in Form GST DRC-04 as required under the CGST Rules. In ***Vallabh Textiles v. Senior Intelligence Officer and Ors.*** (*supra*), a Coordinate Bench had held that failure to follow the prescribed procedure would also lead to the conclusion that the deposit made by the taxpayer was not voluntary.

33. In ***Bhumi Associate v. Union of India*** (*supra*), the Gujarat High Court had issued a following directions to obviate any complaints of officers coercing taxpayers to deposit tax during search proceedings:

“The Central Board of Indirect Taxes and Customs as well as the Chief Commissioner of Central/State Tax of the State of Gujarat are hereby directed to issue the following guidelines by way of suitable circular/instructions:

(1) No recovery in any mode by cheque, cash, e-payment or adjustment of input tax credit should be made at the time of search/inspection proceedings under Section 67 of the Central/Gujarat Goods and Services Tax Act, 2017 under any circumstances.

(2) Even if the assessee comes forward to make voluntary payment by filing Form DRC-03, the assessee should be asked/ advised to file such Form DRC-03 on the next day after the end of search proceedings and after the officers of the visiting team have left the premises of the assessee.

(3) Facility of filing complaint/ grievance after the end of search proceedings should be made available to the assessee if the assessee was forced to make payment in any mode during the pendency of the search proceedings.



(4) If complaint/ grievance is filed by assessee and officer is found to have acted in defiance of the afore-stated directions, then strict disciplinary action should be initiated against the concerned officer.”

34. In terms of the aforesaid directions, the concerned officers were required to advise the taxpayer, who come forward to deposit tax during the course of search proceedings, that he should do so on the next day after the proceedings have been concluded.

35. However, it appears that the said directions have not been implemented. In *Vallabh Textiles v. Senior Intelligence Officer and Ors.* (*supra*), a Coordinate Bench of this Court had respectfully concurred with the aforesaid directions.

36. The Central Board of Indirect Taxes and Customs (CBIC) has also issued instructions emphasizing that the tax must be collected only after following the due process of law. The relevant extract of the said instructions dated 25.05.2022 are set out below:

“3. It is further observed that recovery of taxes not paid or short paid, can be made under the provisions of Section 79 of CGST Act, 2017 only after following due legal process of issuance of notice and subsequent confirmation of demand by issuance of adjudication order. No recovery can be made unless the amount becomes payable in pursuance of an order passed by the adjudicating authority or otherwise becomes payable under the provisions of CGST Act and rules made therein. Therefore, there may not arise any situation where "recovery" of the tax dues has to be made by the tax officer from the taxpayer during the course of search, inspection or investigation, on account of any issue detected during such proceedings. However, the law does not bar the taxpayer from voluntarily making payment of any tax



liability ascertained by him or the tax officer in respect of such issues, either during the course of such proceedings or subsequently.

4. Therefore, it is clarified that there may not be any circumstance necessitating 'recovery' of tax dues during the course of search or inspection or investigation proceedings.....”.

37. It is clear from the above, that it is impermissible for the officers to pressurize the taxpayers to pay tax without following the requisite procedure, notwithstanding that it may be apparent that such tax is due and payable.

38. The reliance placed on behalf of the respondents on the decision of the Kerala High Court in ***Suresh Kumar P.P. and Ors. v. The Deputy Director, Directorate General of GST Intelligence (DGGI) and Ors.*** (*supra*) is of little assistance to the respondents as in that case, the Court had concluded that the cheque issued by the taxpayer was voluntary and was sanctioned by the statute and the CGST Rules made thereunder.

39. It was contended on behalf of the respondents that since the petitioner had not retracted his statement, it was not open for the petitioner to claim that the payments made were not voluntary. There is no factual foundation for the said contention. A plain reading of the statement of the petitioner as recorded on 07.10.2022 does not indicate that he had acknowledged the liability to pay any tax or that he had availed ITC contrary to law. On the contrary, the petitioner had disputed that there was any mismatch in the returns filed for the period 2017-18



and 2022-23. The respondents rely on paragraph 14 of the said statement, which reads as under:

“14. That the visiting team has informed that the following inward supply dealers have been cancelled suomoto from the date of registration:

1. M/s. Samridhi exports (07AFGPY9258P2Z7)
ITC Rs.18,72,000/-”

40. The above statement cannot be read as acknowledgment of any liability to pay ITC. It merely records that the visiting team had informed the petitioner that the registration of the supplier, M/s Samridhi Exports had been cancelled. The same cannot be read as the petitioner acknowledging that he was liable to reverse the ITC in respect of purchases made from the said dealer.

41. In view of the above, the reliance placed by the respondents on the decision of this Court in *M/s RCI Industries and Technologies and Technologies Ltd. Through its Director Rajeev Gupta v. Commissioner DGST Delhi & Ors.: MANU/DE/0081/2021* is also misplaced. In that case, the assessee’s claim that he was coerced to make the statement was doubted on the ground that the petitioner had not retracted the same. The said decision has no relevance in the facts of this case.

42. The decision of the Gujarat High Court in *S.S. Industries v. Union of India (supra)* is also of little assistance to the respondents. In that case, there were serious allegations against the petitioner, which



were set out in the counter affidavit. The Court had set out the said allegations and in paragraph 71 of the said decision, noted that none of the said averments made in the counter affidavit, were refuted. As stated hereinbefore, in the present case, there is no acknowledgement by the petitioner that he had wrongfully availed of the ITC.

43. In view of the above, we direct the respondents to reverse the ITC of ₹18,72,000/- deposited by the petitioner on 08.10.2022 and forthwith credit the same in his ECL.

44. It is clarified that this would not preclude the respondents from taking any other steps in accordance with law. In the event the Commissioner or a duly authorized officer has reason to believe that the ITC available in the ECL of the petitioner has been fraudulently availed or is ineligible, the concerned officer is not precluded from passing an appropriate order including any order under Rule 86A of the CGST Rules, if the conditions as set out therein are satisfied. The respondents are also not precluded from taking steps to protect the interest of the Revenue in accordance with law.

45. The petition is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

NOVEMBER 05, 2023/RK