



2023:DHC:8662-DB



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: **05.12.2023**

+ **W.P.(C) 158/2023**

NEERAJ PAPER MARKETING LTD. Petitioner

versus

**SPECIAL COMMISSIONER, DEPARTMENT
OF TRADE AND TAXES, GNCTD & ORS.** Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Shammi Kapoor, Mrs. Kavita Jha, Mr.
Vishal Kumar, Mr. Sandeep Gupta & Ms.
Prachi Jain, Advs.

For the Respondents : Mr. Rajvee Aggarwal & Ms. Shipla Singh,
Advs. for R-1&2.

Mr. Chiranjeev Kumar, Mr. Kukesh
Sachdeva & Mr. Dipanshu Gaba, Advs. for
UOI.

**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 respondent no.1 be directed to refund the amount of ₹28,20,000/-



deposited by the petitioner during the course of search and inspection conducted on 29.07.2022, along with a simple interest of 12% p.a. from the date of payment. The petitioner claims that it was coerced to deposit the aforesaid amount and that the same cannot be considered as a deposit done voluntarily under Section 74(5) of the Central Goods & Services Tax Act, 2017 (hereafter the ‘**CGST Act**’).

FACTUAL CONTEXT

2. The petitioner carries on a business in trading of waste paper and craft paper, which are taxable at 5% and 12% respectively, under the provisions of GST laws. The petitioner is registered with the GST Department under the registration: GSTIN No. 07AAACN0196P1Z3.

3. On 29.07.2022, a search was conducted at the petitioner’s business premises, 218-222, Aggarwal Prestige Mall, Pitampura, Delhi, under Sub-section (2) of Section 67 of the CGST Act, on the basis of GST INS-01, issued by respondent no.1. The reasons for the aforementioned operation, as detailed in the said form, are that the petitioner had suppressed transaction relating to supply of goods and/or services; suppressed transaction relating to stock of goods in hand; claimed input tax credit (**ITC**) in excess of his entitlement under the CGST Act; and, indulged in contravention of provisions of GST laws with the intent to evade payment of tax.

4. During the course of the search operation, documents pertaining to the financial period FY 2017-2018 to 2020-2021 were inspected.



Consequently, it was revealed that there was a mismatch of ₹60 lakhs in GSTR-2A and GSTR-3B during the year 2018-2019, and ₹20 lakhs in the year 2019-2020.

5. The petitioner claims that its Director (Sh. Deepak Goel S/o Sh. Vinod Kumar Goel) was coerced by the visiting team officers of respondent no.1 into depositing an amount of ₹25,20,000/- under GST DRC-03 dated 29.07.2022 and ₹3,00,000 under GST DRC-03 dated 30.07.2022. The breakup of payment of the aforementioned amounts is as follows:

"S.No.	Amount (₹)	Mode of Payment (Ledger Utilised)	Date and time of payment	Method of payment
1.	20,70,000/-	Cash	29.07.2022 at 11:49 pm	DRC-03
2.	3,00,000/-	Cash	30.07.2022 at 12:38 am	DRC-03
3.	4,50,000	Input Tax Credit	29.07.2022 at 11:49pm	DRC-03"

6. The statement of Mr. Deepak Goel, Director of M/s Neeraj Paper Marketing Limited, was recorded on 29.07.2022. He acknowledged that there was a mismatch of ₹60,00,000/- in GSTR 2A/3B during the financial year 2018-2019 and ₹20,00,000/- in the year 2019-2020. He furnished a reconciliation statement for the period of 2018-2019 and 2019-2020, and undertook that the tax liability, if any, along with interest and penalty would be paid, in case there was any tax liability arising out of the mismatch in the two returns.



7. The petitioner, by letter dated 13.12.2022, requested respondent no.2, to refund the amount deposited on 29.07.2022 *vide* the GST DRC-03 forms, along with the applicable interest.

REASONS & CONCLUSION

8. The petitioner claims refund of the amounts paid in cash and by debiting the Electronic Credit Ledger (ECL) while the visiting team of respondent no.1 was conducting operations under Section 67(2) of the CGST Act. The principal question that arises for consideration is whether the payments so made could be considered as voluntary payments under Section 73(5) or Section 74(5) of the CGST Act. The learned counsel appearing for the respondents submits that the payments made were voluntary as the petitioner had acknowledged its liability during the inspection conducted on 29.07.2022. It is also stated that the statement of the Director of the petitioner was recorded on that date and that he had admitted that there was a mismatch in the returns filed for the Financial Years 2018-2019 and 2019-2020. It is further contended on behalf of the respondents that since the Director of the petitioner had not retracted the statement recorded on 29.07.2022, it is not open for the petitioner to contend that the petitioner had not deposited the amount voluntarily but under coercion.

9. It is apparent from the records that the respondents have not followed the procedure in respect of voluntary deposits made by a taxpayer. Admittedly, an acknowledgment under Rule 142(2) of the Central Goods & Services Tax Rules, 2017 (hereafter '**CGST Rules**')



has not been followed. Although, the payments made by the petitioner were covered under form GST DRC-03, the respondents have not issued any acknowledgement accepting the said payment in form GST DRC-04.

10. Section 73 of the CGST Act as well as Section 74 of the CGST Act enables a taxpayer to make voluntary payments. In terms of Sub-section (5) of Section 73 of the CGST Act, a person chargeable with tax may pay tax on self-ascertainment basis along with an interest, prior to issuance of any notice under Section 73(1) of the CGST Act. If the taxpayer makes any such payments, it would be absolved of the penalty payable under the provisions of the CGST Act. However, if the payments made fall short of the amount payable, the proper officer may proceed with issuance of notice under Section 73(1) of the CGST Act. Sub-sections (5), (6) and (7) of Section 73 of the CGST Act are set out below:

“(5) The person chargeable with tax may, before service of notice under sub-section (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 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.”

11. The scheme under Section 74 of the CGST Act is also somewhat similar except that a taxpayer is required to pay the tax, interest, as well as the penalty to the extent of 15% to absolve itself of any further liability in respect of penalty. Sub-sections (4), (5), (6) and (7) of Section 74 of the CGST Act are set out below:

“(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent of such tax 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), in respect of the tax so paid or any penalty payable under the provisions of this Act or the 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.”

12. In the present case, the respondents have also issued the following show cause notices to the petitioner:

“(i) SCN bearing Reference No. ZD070323003988A was issued for the period April, 2018 to March, 2019, demanding tax amounting to Rs.60,65,610/- (i.e., CGST and SGST of Rs. 30,32,805/- each) towards mismatch of input tax credit in terms of GSTR-3B vs. GSTR-2A, along with a total interest of Rs. 43,67,238/- as well as penalty of Rs. 60,65,610/- under section 74 of the Central Goods and Services Tax Act, 2017 (hereafter **‘the Act’**).

(ii) SCN bearing Reference No. ZD0703230039997 was issued for the period April, 2019 to March, 2020, demanding tax amounting to Rs.26,27,366/- (i.e., CGST and SGST of Rs.13,13,683/- each) towards mismatch of input tax credit in terms of GSTR-3B vs. GSTR-2A, along with a total interest of Rs. 14,18,776/- as well as penalty of Rs. 26,27,366/- under section 74 of the Act.”

13. A plain reading of the show cause notices would indicate that the same are premised on the mismatch of the ITC in terms of form GSTR-3B and form GSTR-2A. It is also material to note that although, the show cause notices indicate that the petitioner had deposited the tax and penalty on 29.07.2022, the quantum of proposed demand did not provide for any credit for the same. It is apparent that such show cause notices are in terms of Section 74(7) of the CGST Act inasmuch as they are not limited to the amount which falls short of the amount payable after accounting for the tax deposited.



14. Thus, the respondents have neither acknowledged the amounts deposited by the taxpayer on 29.07.2022 nor have they granted the benefit of the said deposit, while issuing the proposed demand under Section 74(7) of the CGST Act.

15. In ***Vallabh Textiles v. Senior Intelligence Officer & Ors.: 2022 SCC OnLine Del 4508***, a Coordinate Bench of this Court had observed that not following the stipulated procedure would also lead to the conclusion that the payments were not voluntary.

16. The contention that the petitioner had acknowledged the liability as reflected in the statement of its Director (Sh. Deepak Goel) recorded on the said date is also unpersuasive. The relevant extract of the said statement is set out below:

“9. That there is mismatch of Rs.0.6 Cr/-in GSTR 2A/3B during the year 2018-19 and Rs 0.2 Cr in the year 2019-20. I am enclosing the reconciliation statement for the period 2018-19 and 2019-20. If there is any tax liability arises due to this mismatch, the same will be paid along with interest and penalty.

10. That I Provided the copies of the available Books of accounts requisitioned as per notice served upon me under rule 56(18) of DGST Act & Rules, 2017 in respect of my firm M/s Neeraj Paper Marketing Limited, 218-222, Aggarwal Prestige Mall, Pitampura, Delhi-34, which were duly signed by me. That I have provided the following documents to be visiting team

- (i) Profit & Loss a/c for the period 01/04/2022 to 29/07/22.
- (ii) Cash book as on 29/07/22.
- (iii) Copies of Audited balance sheet for the financial year 2021-22.



- (vi) Party ledger of paper waste dealer long with details of contact no. (which are available with me) and details of bank account in which payments have been made.
- (v) Re-conciliation for the period 2018-19 and 2019-20.
11. That I will furnish the following documents in the Department on 08.08.2022.
- i) Stock register for the period 01.04.2022 to 20.07.2022.
 - ii) Aging Chart.
 - iii) sale & purchase bill of current F.Y. 2020-21 and 21-22.
 - iv) Profit and loss statement of 2017-18, 2018-19, 2019-20, 20-21 and 21-22.
 - v) Audited balance sheet of 2017-18, 2018-19, 2019-20 & 2020-21.

12. That in case any other documents are required, the same shall be provided as and when asked for.

13. That I made Purchase from the tax payer namely M/s Paras Enterprises(07BWWPD8654G2ZX), M/s Vihan Enterprises (07DCPPP1246D1ZK), M/s Gajraj Traders (07CIMP4159E1Z4), M/s Hari Om Enterprises (07BEKPN6204G1ZJ) and M/s Jagdamba Enterprises (07BMZPT8632F1Z7) and M/ s RIDHI SIDHI ENTERPRISES (07BOGPG6677G2ZN).”

17. It is clear from the above that whilst the petitioner has accepted that there was a mismatch in its return regarding the ITC, he did not acknowledge that the ITC was incorrectly availed. On the contrary, the Director of the petitioner had acknowledged that in case there was any tax liability, the same would be paid with interest and penalty. Admittedly, the respondents have not ascertained the said liability and no notice has been issued to the petitioner as contemplated under Rule 142 (1A) of the CGST Rules communicating the details of any tax, interest or liability as ascertained.



18. As noticed above, it is not disputed that payments aggregating to ₹28,20,000/- have been made at 11:49 PM and at 12:38 PM during the search operations. We are, therefore, inclined to accept the petitioner's contention that the payments made by it were not voluntary payments but under compelling circumstances.

19. The issues raised in the present petition are clearly covered by the earlier decision of this Court in **Vallabh Textiles v. Senior Intelligence Officer & Ors.** (*supra*) as well as the decision of this Court in **Lovelesh Singhal v. Commissioner, Delhi Goods & Service Tax & Ors.**: Neutral Citation No.2023:DHC:8631-DB.

20. In view of the above, the present petition is allowed. The respondents are directed to refund the amount deposited by the petitioner by making a payment of ₹23,70,000/- in cash along with interest at the rate of 6% per annum from 13.12.2022 till the date of payment. The respondents are also directed to refund an amount of ₹4,50,000/- by reversing the debit from the petitioner's ECL.

21. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

DECEMBER 05, 2023

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