

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:1097-DB

RESERVED

**Court No. - 1**

**Case :-** WRIT TAX No. - 229 of 2023

**Petitioner :-** M/S R.C. Infra Digital Solutions Thru. Auth.

Representative Mr. Ashish Kumar

**Respondent :-** Union Of India Thru. Secy. Ministry Of Finance , Deptt. Of Revenue New Delhi And Others

**Counsel for Petitioner :-** Siddharth Nandwani

**Counsel for Respondent :-** A.S.G.I., Digvijay Nath Dubey, Dipak Seth

**Hon'ble Attau Rahman Masoodi, J.**

**Hon'ble Om Prakash Shukla, J.**

**(Per Om Prakash Shukla, J.)**

(1) Heard Mr. Sameer Gupta, Mr. Prashant Verma, Mr. Siddharth Nandwani, learned Counsel representing the petitioners and Mr. Ashwani Kumar Singh, learned Counsel representing the respondent No.1, Mr. Manish Mishra, learned Standing Counsel representing the Central Board of Indirect Taxes & Customs/respondent Nos.2, 3 and Mr. Digvijay Nath Dubey, learned Standing Counsel representing the Directorate of Goods & Service Tax Intelligence.

(2) The petitioner has invoked the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India challenging the Notification No. 14/2017- Central Tax dated 01.07.2017 primarily on the ground of it being *ultra-vires* to the power of the Central Government. A further challenge has been laid to the

jurisdiction of the Additional Director General of Goods and Services Tax Intelligence in authorizing the other Intelligence Officer to carry out inspection/search proceedings at the premises of the petitioner under Section 67 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as '*CGST Act, 2017*'). A consequential challenge has also been made by the petitioner to the issuance of summons dated 06.06.2023 and 14.06.2023 issued by the Intelligence Officer under Section 70 of the CGST Act, 2017 as it has been alleged to have been issued without authority of law. Other issue of an amount of Rs. 40 Lakhs having been deposited under coercion has been raised by the petitioner in the instant petition.

- (3) The facts of the present case as is pleaded in the writ petition can be capitulated briefly by stating that the petitioner is a partnership firm registered under Goods and Services Tax having GSTIN 09AAYFR5496BIZH and is engaged in the business of work contract services. The Additional Director General, Directorate General of Goods and Services Tax Intelligence (hereinafter referred as '*DGSI*'), who had reasons to believe that documents related to search were secreted at the premises of the petitioner, authorized Intelligence Officers (arrayed as respondent Nos. 5 to 8) to conduct inspection/ search at the premises of the petitioner on 06.06.2023 under Section 67 of the CGST Act, 2017, wherein a

*punchnama* of the said inspection/search was also got prepared by the authority.

- (4) It is the case of the petitioner that although during the aforesaid inspection/search, the Intelligence Officer of DGSI were apprised about an ongoing enquiry being conducted by the Anti Evasion Wing of CGST and apparently a summon dated 16.05.2023 had also been issued by the said Anti Evasion Wing for the period November, 2018 to March, 2023, however, the petitioner was coerced to deposit an amount of Rs. 40,00,000/- under the threat of arrest by the said officers of DGSI, who also issued summon dated 06.06.2023 under Section 70 of the CGST Act, 2017 and called for the following information :-

- “(i) Ledger of purchase and sale for the period November 2018 to till date;
- (ii) Ledger of ITC and details of ITC available for the period November, 2018 to till date;
- (iii) Bank statement for the period November 2018 to till date.”

- (5) Although, the petitioner had raised a preliminary objection to the issuance of the aforesaid summons without the DIN number as being in violation of Circular No. 122/41/2019-GST dated 05.11.2019, however, this Court finds that the said objection does not exist presently as it has been submitted by the petitioner that subsequently, the respondent rectified the said objection by issuance of a fresh summons dated 14.06.2023 and directing the

same set of information/documents from the petitioner, to which again an objection was raised by the petitioner on the ground of jurisdiction, as according to him the same set of documents have already been furnished to the Anti Evasion Wing of GST and now asking of the same set of documents by the officers of DGSI was not legal on the ground of exercise of parallel jurisdiction.

- (6) Learned Counsel for the petitioner has taken this Court to various provisions of the CGST Act, 2017 including Section 2 (24), which defines the term ‘Commissioner’, Section 3 which relates to ‘officers appointed under the said Act’, Section 2 (53) which relates to ‘notification power of the Central Government to appoint such class of officers as provided under the Act’, Section 2 (91) which defines ‘proper officer’, Section 2 (25) which defines ‘commissioner in the Board’, Section 168 which relates to ‘power to issue instruction or directions’. According to the learned Counsel, a conjoint reading of Section 2 (91) with Section 168 (2) of the CGST Act, 2017 signifies that the proper officer would be the Commissioner in Board or an Officer of Central Tax, who is assigned that function by the Commissioner in Board and although Commissioner in Board is the proper officer for the purpose of CGST Act, 2017, however, the definition clause does not confer any power on the Commissioner in Board to assign any power/function to the Officer of the Central Tax. Further,

according to the learned Counsel, it is Section 5 (3) of the CGST Act, 2017 which confers the power on the Commissioner to delegate his powers to officers who are subordinate to him and thus according to him, a reading of all these sections leads to the inevitable conclusion that the proper officer is Commissioner in Board and he has been conferred with the power to delegate the functions of proper officer to other subordinate officer of Central Tax.

- (7) Thus, it has been contended by the learned Counsel for the petitioner that although the Central Government under the power conferred under Section 3 of the CGST Act, 2017 has issued the impugned Notification No. No. 14/2017- Central Tax and appointed the officers of DGSI as Central Tax Officers and also invested it with all the powers that are exercisable by the officers of corresponding ranks, however, according to him Section 3 of the CGST Act, 2017 only confers the power on the Central Government to appoint the class of officers by way of notification and does not permit them the authority to confer any power to such appointed officers. Simply put forward, according to the learned Counsel, the legislature has invested the authority to delegate the functions of proper function upon the Commissioner in Board, however, no such authority has been conferred upon the Central Government and as such the jurisdiction exercised by the Central

Government in issuance of Notification No. 14/2017- Central Tax is ultra vires to Section 5 of the CGST Act, 2017 and other provisions of the said Act.

- (8) It has been submitted by the petitioner that the Central Government has usurped the power of Commissioner in Board by investing the powers with DCSI vide the said impugned notification No. 14/2017- Central Tax. According to him, the Central Government has no power to delegate the power exercisable by the Central Tax Officer to DCSI which has been specifically entrusted upon the Commissioner in Board by the statute and has in that regard also quoted Sections 167 and 168 (2) of the CGST Act, 2017 to argue that the Commissioner in Board may by notification direct any power exercisable by any authority, however, the same power is not available to the Central Government and merely by notifying DCSI as officer of Central Tax would not automatically invest them with the power to perform the function of proper officer. Thus, according to him, powers can be invested with DCSI by issuance of notification by the Commissioner in Board under Section 167 of the CGST Act, 2017 or by specifically delegating the power of proper officer by issuance of a circular akin to the circular No. 3/3/2017- GST dated 05.07.2017.

- (9) The next leg of argument addressed by the learned Counsel for the petitioner is relating to the impugned search/inspection proceedings and the summons having been issued by the Intelligence Officer of DGSI amounted to conducting parallel proceedings on the same subject matter by two different wings of same authority. According to the petitioner, the DGSI Officers cannot exercise their jurisdiction to conduct any proceeding on the same subject matter which is already being conducted by the Anti Evasion Wing of GST Department. In an another limb of his argument, the learned Counsel vehemently submitted that the coercive action of the respondent has culminated into the recovery of an amount of Rs. 40 Lakhs from the petitioner without issuance of any show-cause notice or finalization of demand pursuant to the adjudication, which is also contrary to Instruction No. 01/2022-23 (GST- Investigation) dated 25.05.2022. The learned Counsel has also referred to the judgment of the Apex Court passed in **J.K. Industries Ltd. Vs. Union of India** : (2007) 13 SCC 673 to argue that a delegate cannot override the Act either by exceeding the authority or making provisions which are inconsistent with the Act. Judgments of the Apex Court in **State of U.P Vs. Renusagar Co.** AIR 1988 SC 1737 and **Commissioner of Customs Vs Sayed Ali** : 2011 (265) ELT 179S.C) have also been pressed for the proposition of subordinate legislation.

(10) Per contra, the learned Counsel for the respondents have controverted the arguments of the petitioner and the learned Standing Counsel for Central board of Indirect Taxes & Customs appearing for respondent Nos.2 and 3 has also chosen to file a written arguments. It has been the common ground of the respondents that the impugned Notification No. 14/2017 dated 1/7/2017 has subsequently been corrected through corrigendum dated 29/07/2019 by virtue of which the word “*the Central Board of excise and Customs*” has been omitted and in place thereof the word “*the Government*” has been inserted in the said impugned notification. The learned Counsel has also submitted that the present writ petition has been filed on misinterpretation and misconception of powers of the Central Government, inasmuch as Section 3 of the CGST Act, 2017 vividly says that the Government is the only authority, which can appoint the officers for the purpose of the CGST Act, 2017 through notification and further Section 4 of the CGST Act, 2017 empowers the Central Board of Indirect Taxes to appoint such officers as it deem fit in addition to the officers appointed by the Government. Thus, it is the contention of the learned Counsel that the basic power of appointment lies with the Central Government and the Board has been merely given additional power. They have also contended that a conjoint reading of sub-section 1 of section 5 read with section 3 clarifies that the Government is authorized to appoint the officers for the

administration of Act and the officers holding the post will discharge their duties as assigned under the CGST Act, 2017, therefore according to them, it cannot be said that only the Commissioner is authorized to delegate his power to all other officers. It has been contended that sub-section 3 of section 5 of CGST Act, 2017 only provides that the Commissioner can delegate his powers to any of his subordinate officers which does not mean that the power and authority of Central Government or the Board has been snatched by the legislation. It has also been contended that even section 167 read with sub section 2 of section 168 of CGST Act, 2017 also does not empower the Commissioner alone to authorize the officer for any particular act. Thus, it has been submitted that since the decision taken by the Central Government was only with respect to assigning the powers of Commissioner to certain other officers, who are already recognized as Central Tax Officers, it is well within the power conferred by the enabling Act and such an exercise of power cannot be termed as *ultra vires*. As regards the summons issued and the money deposited, it has been contended that the summons were issued in June, 2023 and the deposits were also made in the same month, however, the petitioner chose to come to this Court only in December, 2023 and since it is a case of search and the enquiry proceeding is still going on and the same is still not finalized, the present writ is premature. According to them, there is a mechanism

to challenge the further proceedings, which have been provided in the CGST Act, 2017 itself and as such the prayer for summons and deposit are not maintainable before this Court in exercise of its writ jurisdiction. Thus, prayer for dismissal of the present petition is made in defence.

(11) This Court has given an anxious thought to the pleadings and contention of the parties. The fulcrum of the submission made by the parties are based on the validity of Notification No. 14/2017 dated 1/7/2017 and as such this Court finds apt to first deal with the said aspect.

(12) At the outset, it may be noted that the submissions made by the learned Counsel for the petitioner appears to be very attractive in the first blush, however, a deeper investigation into the submissions made by the learned Counsel for the petitioner would reveal that the same is without any substance. In order to appreciate his submissions, it would be beneficial to note that the impugned Notification No. 14/2017–Central Tax dated 01.07.2017 *inter-alia* states :-

“In exercise of the power conferred under section 3 read with section 5 of the Central Goods and Services Tax Act, 2017 ( 13 of 2017), the Central Board of Excise and Customs hereby appoints the officers in the Directorate General of Goods and Service Tax Intelligence, Directorate General of Goods and Service Tax, Directorate General of Audit as specified in column(2) of the Table

below, as central Tax Officers and invest them with all the powers under the Central Goods and Service tax Act, 2017 and the Integrated Goods and Services Tax Act, 2017 and the rules made there under, throughout the territory of India, as are exercisable by the central tax Officers of the corresponding rank as specified in column (3) of the said Table...”

- (13) Further, it has been contended that the aforesaid Notification was amended vide a corrigendum dated 29<sup>th</sup> July, 2019, wherein for the word “Central Board of Excise and Customs”, the word “Government” has been substituted. Therefore, it is the Government, who has notified the impugned Notification No. 14/2017 dated 01.07.2017 and according to this Court, section 3 of the CGST Act, 2017 is sufficiently couched with the powers vested on the Government to appoint the various class of officers for the purposes of this Act. Thus, as regards the appointment of officers in the Directorate General of Goods and Service Tax Intelligence, Directorate General of Goods and Service Tax, Directorate General of Audit as specified in column (2) of the said Table as Central Tax Officers cannot be faulted with in the Notification. However, as contended by the petitioner, the power to these Central Tax Officers can be conferred only under Section 5 of the CGST Act and the procedure to be followed ought to be as mentioned under section 167 and 168 (2) of the CGST Act, 2017.
- (14) No doubt, this Court is clear in its mind that in a taxation statute, any officer performing a function under the said statute must

necessarily meet three concomitants, namely, **(i) existence of a class/post, (ii) appointment of officers to that said post/class and (iii) assignment of power to the said post/class.** Under the CGST Act, 2017, it is seen and as has been rightly contended by the learned Counsel for the petitioner that section 3 of CGST, 2017 creates the class/post of officers and it clearly says that the Government by notification shall appoint the said class of officers for the purposes of CGST Act. Further, Section 4 of CGST, 2017 provides for appointment of officers/additional officers by the Board in addition to the notification by the Government under Section 3 of the CGST Act, 2017. Most significantly, section 5 of the CGST Act, 2017 says that the Board may impose conditions/limitations on exercise of powers and discharge of duties conferred or imposed on an officer of Central Tax under the Act. It further says that an officer of Central Tax may exercise the powers and discharge the duties conferred or imposed under the GST Act on any other officer of Central Tax, who is subordinate to him. Section 5(3) of the CGST Act, 2017 says that the Commissioner may delegate his powers to any other officer who is subordinate to him subject to conditions and limitation as may be specified by him. Thus, it can be safely said that section 5 of the CGST Act provides that any officer who has been so appointed must be assigned / entrusted / invested with specified powers under CGST Act to enable him to perform those functions.

- (15) Apparently, unless these processes are undertaken, an officer cannot perform the functions under the law. The functions are specified in various provisions where either it is assigned to a class of officers or to a 'Proper Officer'. A Proper Officer as per Section 2(91) of the CGST Act, 2017 is a 'Commissioner' or the officer of the Central Tax, who has been assigned that function by the Commissioner in the Board. Thus, assignment of function to a specific class of officers is an inevitable requirement.
- (16) Vide Notification No. 02/2017-Central Tax dated June 19, 2017 issued under Section 3 read with Section 5 of the CGST Act, 2017, the Central Government appointed classes of officers for Central Tax and vested them with all the powers in respect of the territory specified. However, these provisions do not provide for assignment/entrustment/investment of powers by the Government. The Central Government issued another Notification No. 14/2017-Central Tax dated July 1, 2017 under Section 3 read with 5 of the CGST Act, 2017 notifying equivalent class/posts for officers of DGGI. Thus, officers of DGGI became Central Tax officers of specified class / post. However, as pointed out by the learned Counsel for the petitioner, these DGGI officers were merely appointed by the Government in view of section 3 of the Act and they could not have been assigned / entrusted / invested with specified powers under CGST Act to enable them to perform those

functions under section 5 of the Act, as it is essentially the Board, which has been empowered under the said section of the GST Act to confer such power on the Officer of Central Tax.

(17) Section 5 of the CGST Act, 2017 states *inter-alia* :-

(1) Subject to such conditions and limitations as the Board may impose, an officer of central tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of central tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of central tax who is subordinate to him.

(3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him.

(4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of central tax.

(18) It is apparent from the above that as per section 5 (1) of CGST Act, 2017, it is the Board, which confers and impose such conditions and limitation on an officer of central tax for exercising the powers and duties conferred under the CGST Act, 2017 and section 5(3) of CGST Act, 2017 empowers the commissioner to delegate his powers to any other officer, who is subordinate to him. Further, section 2 (16) of the CGST Act, 2017 says that "Board" means

the Central Board of Indirect Taxes and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963). Further, section 3 of the Central Boards of Revenue Act, 1963 relating to Constitution of Central Boards for Indirect Taxes and Customs says that it is the Central Government, which shall constitute the Central Board of Indirect Taxes and Customs and the said Board shall be subject to the control of the Central Government and shall exercise such powers and perform such duties, as may be entrusted to that Board by the Central Government or by or under any law. Thus, it appears that the Board is subservient to the Government under the Act and it could be well argued that when the power has been invested with the Board to do certain things, how can the Government not exercise such a power.

- (19) However, the question of investing powers on the central tax officers by the Board or the government does not end there as this court finds that the Circular No.3/3/2017-GST dated July 5, 2017 (Annexure-11) issued by the Commissioner in Board relates to assignment of various functions under CGST Act, 2017 to different class of officers, who had been construed to be DGSI officers in terms of Notification No. 14/2017.
- (20) A conjoint reading of Notification No. 14/2017 dated 01.07.2017 and Circular No. 3/3/2017-GST dated 05.07.2017 sufficiently

contemplates the assigning of powers to DGSI officers by the Board. Let's take an example, as per the circular of 05.07.2017, a Superintendent of Central Tax has been assigned the power to function as is mentioned in Sub-section (1) of section 70 and a reading of Notification 14/2017 leads us to conclude as mentioned in serial No. 8 that a senior Intelligence officer, Goods and Service Tax Intelligence or Superintendent, Goods and Service Tax or Superintendent, Audit has been notified to be appointed under section 3 of the GST Act as a central Tax officer and is invested with all the powers under the central Goods and Service Tax Act, 201, throughout the territory of India, as are exercisable by the central Tax officers of the rank of "superintendent". In any case, this court does not find any force in holding that such technical nuances to be fatal for the Notification or to the functions performed by various DGGI officers. The jurisprudence on the implications of invocation of a wrong provision suggests that as long as an authority has power, which is traceable to a source, the mere fact that source of power is not indicated or wrongly indicated in an instrument does not render the instrument invalid.

- (21)** For all the aforesaid reasons, this Court is not inclined to hold that the impugned Notification No. 14/2014 dated 01.07.2017 is *ultra vires* to the powers provided to the Government under the CGST Act, 2017.

(22) Since, the present issue is relating to the power related to Inspection, search, seizure, arrest etc. by the DCSI officer, it can be seen from the CGST Act, 2017 itself that the said powers are mentioned under chapter XIV, wherein section 67 of CGST Act, 2017 relates to power of inspection, search and seizure. Section 69 of the CGST Act, 2017 relates to power of arrest, Section 71 of CGST Act, 2017 relates to access to business premises, section 72 of the CGST Act, 2017 relates to officers to assist proper officers and section 70 of the CGST Act, 2017 relates to power to summon persons to give evidence and produce document. Since, the said power invested under section 70 of the CGST Act, 2017 has been an issue in the present writ petition, it would be beneficial to quote section 70 of the CGST Act, 2017 which inter-alia states:

“70 (1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).”

(23) From a bare reading of Section 70 of the CGST Act, 2017, it clearly emerges that the proper officer has the power to summon any person whose attendance he considers necessary either to give

evidence or to produce the documents in any inquiry in the same manner in the case of a Civil Court under the Civil Procedure Code. Now, as per the definition of 'proper officer' as contained in Section 2 (91) of the CGST Act, 2017, a 'proper officer' in relation to any function to be performed under the CGST Act, 2017 means the Commissioner or the Officer of the Central Tax, who is assigned that function by the Commissioner in the Board. It is pertinent to note that as stated in the petition itself, the respondent No.4 to 8 is an officer of Directorate General of Goods and Services Tax Intelligence (DGGI) holding the designation of Senior Intelligence Officer, who was appointed as the Central Tax Officer with all the powers under the CGST Act and IGST Act and the Rules made thereunder, as are exercisable by the Central Tax Officers of the corresponding ranks as specified in the Notification No.14 of 2017-CT dated 1.7.2017 issued by the Government. It is further pertinent to note that the respondents being the officer of the Central Tax under the CGST Act, 2017 by virtue of the said Notification dated 1.7.2017, they were also assigned the powers of proper officer by the Board vide Circular dated 5.7.2017 issued in exercise of the powers conferred by Clause (91) of Section 2 of the CGST Act, 2017 read with Section 20 of the IGST Act. Therefore, the respondents are proper officer in relation to the function to be performed under the CGST Act, 2017 as contemplated under Section 2 (91) of the CGST Act, 2017, and as such, was entitled to

issue summons under Section 70 of the CGST Act, 2017 in connection with the inquiry initiated against the petitioner.

- (24) There is another aspect of the matter, inasmuch as it has been submitted by the learned Counsel for the petitioner that the said assignment of function has to be by way of Notification and not by way of Circular in view of Section 167 of the CGST Act, 2017 and in any case, the power was to be invested by the commissioner in Board. This court finds that Section 167 of the CGST Act, 2017 pertains to the delegation of powers by the Commissioner exercisable by any authority or officer under the Act to be exercisable also by another authority or officer as may be specified in the Notification. So far as Section 2(91) of CGST Act, 2017 is concerned, it pertains to the proper officer in relation to any function to be performed under the CGST Act, 2017 to be the Commissioner or the officer of Central Tax, who is assigned that function by the Commissioner in the Board. Here the Board means the "Central Board of Indirect Taxes and Customs" as defined in Section 2(16) of the CGST Act, 2017. Vide the Circular dated 5.7.2017 the said Board namely the Central Board of Excise and Customs in exercise of the powers conferred by Section 2(91) of the CGST Act, 2017 read with Section 20 of the IGST Act and subject to Section 5(2) of the CGST Act, 2017 has assigned the officers the functions as that of proper officers in relation to the

various Sections of the CGST Act, 2017 and the Rules made thereunder, and as such the Superintendent of Central Tax has been assigned the function of Section 70(1) of the CGST Act, 2017. Thus, there being no delegation of powers by the Commissioner, the provisions contained in Section 167 of the CGST Act, 2017 could not be said to have been attracted, nor was there any necessity to issue any such Notification. The Court, therefore, does not find any substance in the submission of the Ld. Counsel that the respondent No. 4 to 8 was not the 'proper officer' as per the definition contained in Section 2(91) of the CGST Act, 2017 and therefore, had no powers to issue summons under Section 70 of the CGST Act, 2017.

- (25)** This Court also does not find any force in the submission made by learned Counsel for the petitioner that two parallel proceedings in connection with the same issue were not sustainable. It may be noted that the communication dated 10.05.2023 was issued by the Anti-Evasion Department of the GST for limited inquiry in connection with irregular availment of ITC during the period 2018-19 to 2022-23 under the CGST, 2017 and as such has required the petitioner to produce (i) Ledger of purchase and sales for period November, 18 to March, 2023, (ii) Ledger of ITC availed for period Nov 18 to Mar 23, (iii) Bank Statement for period Nov 18 to Mar 23., whereas the officers of the DGSI have issued summons

for making inquiry in the entire activities of the petitioner under the GST Act, 2017. Pertinently the stage is of enquiry and not of show-cause and apparently, the inquiry being conducted by the Ant evasion department and the inquiry being conducted by the officers of DGSI does not appears to be over-lapping. It is needless to say that the proceedings of issuing summons under Section 70 of the CGST Act, 2017 are the proceedings of judicial nature and the petitioners are bound to respect the same, and cooperate with the inquiry. As such, no prejudice is going to be caused to the petitioner if the statement is tendered or the documents are produced as required by the respondents and adequate safeguards are already in place for ensuring that these enquiries are conducted in a fair and reasonable manner.

- (26)** As regards the payment of Rs. 40 Lakhs made by the petitioners on 8.06.2023 vide Form GST DRC-03 under Rule 142(2) and 142(3) of the GST Rules (Annexure No.7), it may be noted that for the particulars at Sr. No.3 i.e. "cause of payment", it is shown as "voluntary" and at Sr. No. 4 i.e. "section under which voluntary payment is made", it is shown as "Section 74 (5)". At the bottom of the table in the said Form, at Sr. No.8 with regard to "reasons", it has been mentioned that "DRC against IGST Tax financial year 2023 ". Apparently, the said receipt does not mention any words like "under protest" or "without prejudice" etc. and as such it

cannot be prima-facie said that the said payment was made by the petitioners under duress and was not made voluntarily. Further, there was no complaint made by the petitioner before the grievance cell or before any authority of the respondent that the said payment was made under duress and was not made voluntarily.

(27) In the instant case, the petitioners having made payment under Section 74 (5) of the CGST Act, 2017, they appear to have informed the Proper Officer of such payment in the Form GST DRC-03 (Annexure No. 7) as contemplated in Rule 142(2) of the said Rules. It is needless to say that the said payment shall be dealt with or adjusted by the concerned respondent No.3 in accordance with law more particularly as per the provisions contained in Section 74 of the CGST Act, 2017.

(28) For all the aforesaid reasons, this Court does not find any merits in the present petition and as such the same is **dismissed**. However, in the facts of the present case, there shall be no order as to costs.

**(Om Prakash Shukla, J.) (Attau Rahman Masoodi, J.)**

**Order Date :- 5 January, 2024**

Ajit/-