

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: **05.12.2023**

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W.P.(C) 16365/2022**SANTOSH KUMAR GUPTA PROP. MAHAN
POLYMERS**

..... Petitioner

versus

**UNION OF INDIA THROUGH SECRETARY
& ORS.**

..... Respondents

Advocates who appeared in this case:For the Petitioner : Mr. A. K. Babbar & Mr. Surender Kumar,
Advts.For the Respondents : Mr. Aditya Singla, SSC with Ms. Arushi
Sharma, Adv.
Mr. Asheesh Jain, CGSC with Mr. Gaurav
Kumar & Ms. Ankita Kedia & Ms. Seema
Singh, Advts.**CORAM****HON'BLE MR JUSTICE VIBHU BAKHRU****HON'BLE MR JUSTICE AMIT MAHAJAN****JUDGMENT****VIBHU BAKHRU, J**

1. The petitioner is an individual and carries on the business of trading in PVC Resins under the name of his sole proprietorship concern, M/s Mahan Polymers. The petitioner is registered under the Central Goods & Services Tax Act, 2017 (hereafter '**the CGST Act**'))



and has been assigned the Goods and Services Tax Identification Number (**GSTIN**): 07AAPPG5295A1ZP.

2. The petitioner has filed the present petition impugning the search stated to have been conducted in his business premises (3460/1, Jai Mata Market, Tri Nagar, Delhi-110035) under Section 67 of the CGST Act pursuant to the authorization issued in FORM GST INS-01 dated 11.11.2022. The petitioner claims that during the course of the search, he was compelled to deposit the sum of ₹10,00,000/- [₹5,00,000/- under CGST Act and ₹5,00,000/- under the Delhi Goods & Services Tax Act, 2017 (hereafter '**the DGST Act**')]. Accordingly, the petitioner prays that directions be issued to the respondents to refund the sum of ₹10,00,000/- as being collected illegally. In addition, the petitioner also prays that directions be issued for supply of the copy of FORM GST INS-01.

3. The petitioner has challenged the search stated to have been conducted under Section 67 of the CGST Act on principally two grounds. First, he claims that the authorization for the said search was issued mechanically and that there were no reasons to believe that any of the grounds as set out under Section 67(1)(a) of the CGST Act were satisfied. Second, he states that the proceedings initiated under Section 67 of the CGST Act are illegal as prior to the said search, the Delhi Goods & Service Tax Authorities had initiated similar proceedings, by conducting a search at the petitioner's principal place of business on 18.10.2022. The petitioner contends that the proceedings by central



officers on the same grounds is proscribed by virtue of Section 6(2)(b) of the CGST Act.

4. The petitioner claims that his premises were visited by a team of officers at 5:30 pm on 12.11.2022 who conducted the search pursuant to an authorization stated to have been issued by Additional Commissioner, Anti Evasion CGST, Delhi North, under Section 67(1) of the CGST Act. According to the petitioner, during the search proceedings, the officers compelled the petitioner to deposit a sum of ₹10,00,000/- (₹5,00,000/- CGST and ₹5,00,000/- DGST). He claims that at about 9:00 pm, he was made to fill up FORM GST DRC-03 on the laptop carried by the officers of the visiting team. He claims that at the material time he was under the control of the officers of respondent no.3 and was interrogated on account of alleged inadmissible Input Tax Credit (hereafter '**ITC**') availed in respect of supplies purchased from one M/s Hari Om Chemicals. The petitioner claims that he was neither given the copy of the authorization nor was he informed of the reasons as to why the search was being conducted. The petitioner also claims that his statement was recorded but he was neither provided a copy of the statement nor the *punchnama*.

5. The learned counsel for the petitioner contends that the petitioner had sent a letter dated 14.11.2022, calling upon the respondents not to proceed further in view of Section 6(b)(2) of the CGST Act. He contends that the petitioner had also sought to retract the statement



forcibly recorded on the said date. However, the petitioner has not been provided a copy of his statement as yet.

6. In the aforesaid context, the petitioner prays as under:

“a. Your Lordship may kindly, kindly call for the records and be pleased to issue a writ in the nature of certiorari or any other appropriate writ, order or direction

b. to declare the entire search dated 12.11.2022 and statement recorded of Proprietor dated 12.11.2022 as improper and illegal and quash the impugned search Dt. 12.11.2022 and consequential proceedings being undertaken by Respondent No. 3 including getting forcibly filled DRC-03 of Rs. 10.00 lakhs through their own Computer and own WIFI address.

c. Respondent be also directed to issue the Refund of Rs.10.00 Lakhs which had been illegally collected during search (Rs.5.00 Lakhs under CGST Act + Rs.5.00 Lakhs under DGST Act) by forcing petitioner to fill DRC-03 of Rs.10.00 Lakhs at odd hours without adjudication of demand.

d. Respondent No. 3 be directed to supply copy of INS-01, Panchnama, statement recorded by them.

e. Petitioner be compensated with cost for the suffering and harassment meted out to Petitioner due to illegal exercise of power when on cross empowerment of power in term of Section 5 &6 of the DGST Act / Section 5 & 6of CGST Act.

f. Your Lordships may be pleased to issue order(s), direction(s), writ(s) or any other relief(s) including grant of no coercive measure against petitioner in the facts and circumstances of the case and in the interest of justice consequent to impugned search including staying proceeding being undertaken parallel by



Respondent No. 2 and 3 till decision of this Writ Petition;

g. For such other orders as the Hon'ble Court may deem fit in the facts and circumstances of the case including that Respondent should not press upon for payment in Form DRC-03 on basis of alleged statement of proprietor of Petitioner Company dated 12.11.2022 wrongly termed as voluntarily without following procedure prescribed in law i.e. first adjudicating and determining the liability of demand in term of Sec. 73 / 74 of the DGST Act, 2017 and thereafter press for recovery by affording opportunity of hearing in term of Sec. 73 / 74 of the DGST Act or grant any other relief /order in favour of petitioner."

7. A counter affidavit has been filed on behalf of respondents no.1 to 3, the Commissioner CGST, North Commissionerate. It is affirmed in the said affidavit that on an analysis of data, it was found that some registered firms and taxpayers, who were registered in the months of March, 2022 and April, 2022, had issued e-way bills of high values in a short period of time. Investigations and enquiries were conducted which revealed that the registrations (GSTINS) of some of the taxpayers were cancelled or suspended, as they were found to be non-existent during physical verification conducted at their principal place of business. It is stated that one such firm is M/s Sai Polymers. The said concern had secured its registration on 14.03.2022 and that the same was cancelled *suo motu*. It is stated that summons were issued under Section 70 of the CGST Act to the said tax payer (M/s Sai Polymers) at its registered place of business but the same were returned with the remarks to the effect that no such firm / person existed at the said address.



8. It was found that one M/s Hari Om Chemicals had reportedly purchased supplies from M/s Sai Polymers and had availed the ITC in respect of such alleged purchases. The said firm (M/s Hari Om Chemicals) was also found to be non-existent at its registered place of business on verification conducted on 24.08.2022. The summons issued to the said taxpayer were also returned undelivered. It is averred that the registration of M/s Hari Om Chemicals was cancelled and that no one from the said firm had joined the said investigation. Accordingly, the officers had inferred that the said firms were engaged in availing fake ITC.

9. It was found that M/s Mahan Polymers (sole proprietorship concern of the petitioner) had also availed the ITC amounting to ₹47,38,189/- in respect of purchases aggregating ₹2,63,23,270/- from M/s Hari Om Chemicals. Thus, the respondents had reasons to believe that the petitioner had wrongfully availed the ITC, as the supplier (M/s Hari Om Chemicals) was found to be non-existent.

10. The principal question to be addressed is whether, in the aforesaid facts, the inspection carried out by the respondent authorities is illegal for want of reasons to believe that the conditions as set out in Section 67(1)(a) of the CGST Act are satisfied.

11. In *Calcutta Discount Co. Ltd. v. Income Tax Officer, Companies District I Calcutta & Anr.: (1961) 2 SCR 241*, the Constitution Bench of the Supreme Court had, in the context of Section 34 of the Income Tax Act, 1922 observed as under:



“37.....The expression “reason to believe” postulates belief and the existence of reasons for that belief. The belief must be held in good faith: it cannot be merely a pretence. The expression does not mean a purely subjective satisfaction of the Income Tax Officer: the forum of decision as to the existence of reasons and the belief is not in the mind of the Income Tax Officer. If it be asserted that the Income Tax Officer had reason to believe that income had been under-assessed by reason of failure to disclose fully and truly the facts material for assessment, the existence of the belief and the reasons for the belief, but not the sufficiency of the reasons, will be justiciable. The expression therefore predicates that the Income Tax Officer holds the belief induced by the existence of reasons for holding such belief. It contemplates existence of reasons on which the belief is founded, and not merely a belief in the existence of reasons inducing the belief; in other words, the Income Tax Officer must on information at his disposal believe that income has been under-assessed by reason of failure to fully and truly to disclose all material facts necessary for assessment. Such a belief, be it said, may not be based on mere suspicion : it must be founded upon information....”

12. The interpretation of the expression ‘reasons to believe’ in ***Calcutta Discount Co. Ltd. v. Income Tax Officer, Companies District I Calcutta & Anr.*** (*supra*) is instructive in interpreting the said expression as used in Section 67 of the CGST Act as well.

13. The sufficiency of the reasons is not amenable to judicial review. So long as there is material or information, which supplies a rational basis for forming a belief that the conditions as stipulated under Section 67(1) of the CGST Act are satisfied, the search or inspection authorized under the said section cannot be faulted.



14. In *Income Tax Officer, Calcutta & Ors. v. Lakhmani Mewal Das*: AIR 1976 SC 1753, the Supreme Court had, in the context of Section 147 of the Income Tax Act, 1961, observed:

“8.the reasons for formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax officer and the formation of his belief that there has been escapement of income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts.”

15. In the present case, the information that the petitioner had purchased the goods from a supplier, which was found to be non-existent at his principal place of business, has a direct link in forming the belief that the petitioner wrongfully availed of the ITC.

16. In view of the above, we find no ground to declare any search or inspection conducted on 12.11.2022 as illegal or vitiated on the ground that there was no reason to believe that the petitioner had wrongfully availed the ITC.

17. Having noted the above, it is also necessary to state that it is respondent no.3's case that no search was conducted in the premises of the petitioner. It is also affirmed in the counter affidavit filed on behalf of the respondents that neither any summons were issued to the petitioner, nor that the petitioner's statement was recorded on 12.11.2022.



18. The respondents claim that on 12.11.2022, the officers of the Anti-Evasion Branch, CGST visited the premises of the petitioner on the basis of an authorization issued in FORM GST INS-01 dated 11.11.2022. It is stated that on reaching the premises, the same were found closed. Accordingly, the petitioner was contacted and informed about the inspection. It is averred that he arrived at the premises along with his son and opened the same. He informed that his accountant was on leave and that he would submit all documents such as purchase ledger, purchase invoices from M/s Hari Om Chemicals, bank statements of the firms, copy of e-way bills and other necessary documents on 15.11.2022. The respondents further claim that the petitioner voluntarily deposited ₹10,00,000/- by furnishing FORM GST DRC-03 on the said date. According to the respondents, the total ineligible ITC received by the petitioner, concern (M/s Mahan Polymers) from M/s Hari Om Chemicals was to the extent of ₹47,38,137/-. However, the petitioner had chosen to deposit only a sum of ₹10,00,000/-.

19. It is stated that the petitioner had in fact availed of the ITC amounting to ₹3.24 crores approximately, from various suppliers whose registrations were cancelled. The respondents have also given details of the said suppliers (19 in numbers). It is averred that one of the said suppliers is Ridhi Sidhi Polymers, that is being investigated by CGST, North in respect of an allegation of created fake firms for wrongful availment of ITC.



20. The respondents have also produced the copy of the authorization dated 11.11.2022 (in FORM GST INS-01).

21. It is apparent from the above that the central officers had conducted the inspection pursuant to an ongoing investigation in regard to creation of fake firms to fraudulently avail ITC.

22. In view of the above, we find no merit in the petitioner's contention that the inspection conducted by the central officers were illegal. The provisions of Section 6(2)(b) of the CGST Act do not preclude the central officers from conducting an inspection for concluding an ongoing investigation merely because a prior inspection or search was conducted by the DGST authorities.

23. Insofar as the petitioner's prayer that respondent no.3 be directed to supply a copy of the *punchnama* and the statement is concerned, no orders are required to be passed. This is because, according to the respondents, the petitioner's statement was not recorded. It is also not the petitioner's case that any goods or documents were seized from his premises under Section 67(2) of the CGST Act.

24. Insofar as the petitioner's claim that he was coerced to deposit a sum of ₹10,00,000/- is concerned, we find that the said issue is clearly covered by the decisions of this Court in ***Vallabh Textiles v. Senior Intelligence Officer & Ors.***: 2022 SCC OnLine Del 4508 and in ***Lovelesh Singhal v. Commissioner, Delhi Goods & Service Tax & Ors.***: Neutral Citation No. 2023:DHC:8631-DB.



25. The deposit of ₹10,00,000/- was made by the petitioner in the FORM GST DRC-03 at about 9:00 pm while the officers of respondents no.3 were conducting the inspection. The petitioner immediately, by a letter dated 14.11.2022 claimed that the deposit was made involuntarily and under coercion. It is also not disputed that FORM GST DRC-03 had been submitted from the laptop carried by the visiting team. It is also relevant to note that the petitioner filed the present petition on 23.11.2022, that is, within a period of less than ten days, claiming refund of the amount paid.

26. In view of the above, we direct the respondents to refund the sum of ₹10,00,000/- deposited by the petitioner in FORM GST DRC-03 on 12.11.2022. We, however, clarify that this order would not preclude the respondents from taking any steps for protection of the interest of the Revenue including passing an order under Section 83 of the CGST Act or Rule 86(A) of the Central Goods & Services Tax Rules, 2017 if the conditions for the exercise of such powers are satisfied.

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

VIBHU BAKHRU, J

AMIT MAHAJAN, J

DECEMBER 05, 2023

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