IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-7285-2021
Date of decision: 31.3.2021

Magna Wires Pvt. Ltd. and others
...Petitioners

Versus

Union of India and others
...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr.Sudhir Malhtora, Advocate for the petitioners

Mr.Anshuman Chopra, Sr. Standing Counsel CBIC for respondent Nos. 1 and 2

Mr.Gaurav Garg Dhuriwala, Sr.DAG, Punjab for respondent No.4

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<u>JITENDRA CHAUHAN, J.</u>

The matter has been taken up through video-conferencing in the light of the pandemic Covid-19 situation and as per instructions.

This writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of direction to the respondents to defreeze the bank account Nos.06532320000211 (Magna Wires Pvt. Ltd.-petitioner No.1), 06532320001342 (Skyward Rolling & Alloys Ltd.- petitioner No.3), 06532320001016, 50200030855882 (Satya Smelting- petitioner No.2) and 50200011288085 (Suraj Udyog- petitioner No.4) maintained with HDFC Bank Ltd. Jalandhar, freezed vide letter dated 15.2.2021 (Annexure P2) by respondent No.2 and unblock input tax credit of petitioner No.1, which has been blocked vide mail dated 25.2.2021 (Annexure P4) by respondent No.4.

Learned counsel for the petitioners submits that respondent No.2 has provisionally attached the bank accounts of the petitioners under Section 83 of the CGST Act, 2017 without issuing notice to them. Due to the said action of the respondents, the petitioners are unable to pay statutory dues i.e. Taxes, electricity charges, salary to the employees etc. and also due to non-availability of debit facility, they are unable to purchase raw material and meet day to day expenses. Petitioner No.3 had purchased goods against statutory invoices during the period from July, 2017 to December, 2020 from different supplier and same are not in dispute. The petitioners are holding their respective GSTIN numbers and regularly filed statutory returns prescribed under CGST Act, 2017.

Learned counsel for the respondent No.1 and 2 states that M/s Magna Wires Pvt. Ltd. is a manufacturing company primarily engaged in enamelling of copper wire and wire drawing of copper rods and only they use copper wire, copper wire rod and varnish etc. for the same. M/s Skyward Rolling and Alloys Ltd is a trading company dealing in copper, lead, batteries etc. During the initial phase of investigation, Yogesh Singh in his statement dated 24.7.2018, stated that they purchased, rejected/defective batteries from dealer of various battery companies and they were selling these batteries to M/s Magna Wires Pvt. Ltd., Jalandhar as per requirement. A search was conducted at the premises of M/s Satya Smelting on 3.8.2018 and the said firm was found non-operational. Mr.Yogesh Singh, in his statement dated 10.8.2018, stated that they were manufacturing lead ingots through various job workers. He further stated that they purchased rejected batteries from different suppliers and under job work challans, same were sent to their job workers for manufacturing lead ingots. After receiving the final products from the job workers, the same were sold to their buyers. He named M/s Satya Smelting as their job worker for the above purpose. When confronted with the fact that M/s Satya Smelting was not operational. He admitted that they were issuing only invoices to enhance their turnover and to increase bank limit and that they were issuing job work challans to M/s Satya Smelting without actual movement of battery scarp/ rejected batteries and by doing this, they have taken wrong ITC of Rs.3 crore approx. during the period April, 2018 to July, 2018. Later on, he reversed ITC of Rs.1 crore out of this. However, during the course of investigation, it was revealed that M/s Skyward Rolling and Alloys Ltd. had never purchased any rejected / defective batteries and they purportedly mentioned wrong description 'sub-standard / rejected batteries' on the invoices issued to M/s Magna Pvt. Ltd. as per directions of Yogesh Singh. He was confronted about this fact and this time, in his statement dated 2.9.2020, he stated that they have instead received fresh / new batteries and have manufactured lead from these new batteries through their job workers M/s Satya Smelting or other, search was again conducted at the premises of M/s Satya Smelting in January, 2021, which was again found non-operational and it came to light that no manufacturing was done by the said firm from inception to till date. Apart from M/s Satya Smelting, three more firms, which have done relatively minor job work for M/s Magna Wires Pvt. Ltd., also stated that they never received any new batteries from M/s Magna Wires Pvt. Ltd. for job work. As such, the petitioners have committed a GST fraud of Rs.28.46 crores. Thereafter, the department freezed their accounts vide letter dated 15.2.2021 (Annexure P2) issued by respondent No.2 and also blocked input tax credit of petitioner No.1 vide mail dated 25.2.2021 by respondent No.4 (Annexure P4). He further refers to Rule 159(5) CGST Rules, 2007 to contend that the petitioners ought to have exhausted the alternate and statutory remedy of approaching the competent authority i.e. Commissioner, CGST to release their accounts.

Heard.

Rule 159(5) of Central Good Services Tax Rules, 2007 reads as under:-

> Rule 159 – Provisional attachment of property
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> (1) Where the Commissioner decides to attach any property, including bank account in accordance with the provisions of section 83, he shall pass an order in FORM GST DRC-22 to that effect mentioning therein, the details of property which is attached.
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> (2) The Commissioner shall send a copy of the order of attachment to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the Commissioner to that effect.

(3) Where the property attached is of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such property or the amount that is or may become payable by the taxable person, whichever is lower, then such property shall be released forthwith, by an order in FORM GST DRC-23, on proof of payment.

(4) Where the taxable person fails to pay the amount referred to in sub-rule (3) in respect of the said property of perishable or hazardous nature, the Commissioner may dispose of such property and the amount realized thereby shall be adjusted against the tax, interest, penalty, fee or any other amount payable by the taxable person. 159.

(5) Any person whose property is attached may, within seven days of the attachment under sub-rule (1), file an objection to the effect that the property attached was or is not liable to attachment, and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order in FORM GST DRC- 23.

(6) The Commissioner may, upon being satisfied that the property was, or is no longer liable for attachment, release such property by issuing an order in FORM GST DRC- 23.

A plain reading of the abovesaid rules clearly shows that after provisional attachment of the property, the applicant ought to have approached the Commissioner. However, in the present case, the petitioners without availing the efficacious alternative remedy, have approached this Court. We feel that no cause of action has arisen in favour of the petitioners to invoke the inherent jurisdiction of this Court by way of filing the instant petition. Consequently, the instant petition is dismissed.

[JITENDRA CHAUHAN]
JUDGE

[VIVEK PURI)
JUDGE

31.03.2021
gsv

Whether speaking / reasoned? Yes / No

Whether reportable? Yes / No