

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

Civil Writ Petition No. 9559 of 2021 (O&M)

Reserved On: 20.05.2021

Pronounced On: 28.05.2021

J.S. Grover Autos Pvt. Ltd., through its Director
Sh. Sunil Grover, Pathankot, Punjab

..... Petitioner

Versus

Commissioner of Central Goods & Services Tax,
Central Goods and Service Tax Commissionerate, Jalandhar,
Camp at Rishi Nagar, Ludhiana, and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present: Mr. Naveen Bindal, Advocate for the petitioner.

Mr. Sanjay Bansal, Sr. Advocate (Sr. Standing Counsel, CBIC)
assisted by Mr. Amit Parsad, Advocate
for contesting respondent Nos. 1 & 2.

*[The aforesaid presence is being recorded through video conferencing
since the proceedings are being conducted in virtual court]*

JASWANT SINGH, J.

Through instant petition under Article 226 of the Constitution of India, the petitioner – a Private Limited Company is seeking quashing of order dated 23.03.2021 (**Annexure P-2**), whereby Deputy Commissioner, Central Goods and Service Tax, Pathankot, with respect to demand (service tax) confirmed by Assessment Order dated 14.01.2020 (**Annexure P-1**), in exercise of power conferred by Section 87(c) of the Finance Act, 1994 has attached current account of the petitioner which is maintained with Union Bank of India, Pathankot.

[2] The petitioner, a Private Limited Company, located at Ludhiana and Pathankot, is registered with the Service Tax Department

under the categories of “*repair, re-conditioning, restoration or decoration*”

or any other similar service of any other motor vehicle". A Show Cause Notice dated 01.11.2019 raising a demand of service tax alongwith interest and penalty, amouning to ₹ 30,22,888/- for the periods 2014-15 to 2016-17, was issued on the premise that the commissions received on account of incentive / sale promotion were liable to service tax under the category of Business Auxiliary Services (BAS), and thus recoverable under Section 73 of the Finance Act, 1994 alongwith interest and penalty. The aforesaid demand of service tax alongwith interest and penalty was confirmed vide order dated 14.01.2020 **(P-1)**. The petitioner seeking the benefit under the "Amnesty Scheme" filed declaration under Sabka Vishas (Legacy Dispute Resolution) Scheme, 2019, however, by the due date failed to deposit tax assessed by competent authority, thus declaration became meaningless. The respondent to recover tax liability arising out of aforesaid assessment order, in exercise of power conferred by Section 87 of Finance Act, 1994 vide impugned order dated 23.03.2021 **(P-2)** attached bank account of the petitioner.

[3] The petitioner taking advantage of extension of limitation period by Hon'ble Supreme Court vide order dated 08.03.2021 **(Annexure P-3)** in Suo Motu Writ Petition (Civil) No. 3 of 2020, alongwith mandatory pre-deposit of 7.5% of tax liability as required under Section 35F of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994, preferred an appeal before first Appellate Authority against the assessment order dated 14.01.2020 **(P-1)**.

[4] Counsel for the petitioner contends that as per Para-4.2 of Circular dated 16.09.2014 **(Annexure P-6)** issued by Central Board of Excise & Customs (for short 'Board'), no coercive step can be initiated if

appeal is filed alongwith pre-deposit of 7.5%, thus, recovery proceedings initiated by respondent are bad and contrary to Board Circular which is binding upon the Respondent. He further relied upon judgment of Bombay High Court in ***Ramchandra A. Patankar Versus UOI, 2019 (31) GSTL 58 (Bom)***, where similar question has been answered in favour of the assessee.

[5] Per contra, counsel for contesting respondent though did not dispute above stated factual and legal position, however, vehemently opposed present petition on the ground that impugned order is an appealable order, thus, writ petition is not maintainable. The petitioner must be asked to file appeal before Appellate Authority in terms of Section 85 of the Finance Act, 1994.

[6] Having heard arguments of both sides and scrutinized record of the case, we find that it is undisputed fact that petitioner has filed an appeal before First Appellate Authority against the assessment order, whereby demand was created. It is also undisputed that Board Circulars are binding on department and as per Circular coercive measures for recovery of balance liability are not permissible if appeal is filed alongwith mandatory pre-deposit of 7.5%. Para-4.2 of the Circular reads as:-

“4.2 *No coercive measures for the recovery of balance amount i.e. the amount in excess of 7.5% or 10% deposited in terms of Section 35F of Central Excise Act, 1944 or Section 129E of Customs Act, 1962, shall be taken during the pendency of appeal where the party/assessee shows to the jurisdictional authorities:*

- (i) proof of payment of stipulated amount as pre-deposit of 7.5%/10, subject to a limit of Rs. 10 Crore, as the case may be; and*
- (ii) the copy of appeal memo filed with the appellate authority. ”*

[7] Hon'ble Bombay High Court in ***Ramchandra'*** case (*supra*) relying upon Board Circular (*supra*), set aside attachment of bank account on the ground that Appellant has already filed an appeal before Tribunal alongwith mandatory pre-deposit.

[8] The contention of the respondent that petitioner must file appeal before Appellate Authority seems to be highly technical, in view of the fact that petitioner has already filed an appeal against the assessment order whereby demand was created and tax liability intended to be recovered stands stayed in view of Board Circular and judgment of Hon'ble Bombay High Court. As the liability to be recovered stands stayed, there seems no logic to file appeal against the recovery proceedings. The respondent-Department should have restrained itself from coercive recovery as soon as came to know of appeal with mandatory pre-deposit. Thus, contention of the respondent is not sustainable and accordingly rejected.

[9] In view of above findings, present **petition** deserves to be allowed and accordingly **allowed**. The **impugned order** dated 23.03.2021 (**P-2**) is hereby **set aside** and the respondents are **directed** to permit the petitioner to operate its bank account.

(JASWANT SINGH)
JUDGE

May 28th, 2021
'dk kamra'

(SANT PARKASH)
JUDGE

Whether Speaking/reasoned	Yes
Whether Reportable	Yes