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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 18th November, 2021

+ **W.P.(C) 13034/2021**

M/S VIJAY STEELCON PRIVATE LIMITED Petitioner
Through Ms.Vibhooti Malhotra, Adv.

versus

PRINCIPAL COMMISSIONER OF CENTRAL TAX (GST)
DELHI EAST & ORS. Respondents
Through Mr.Harpreet Singh Sr. SC &
Ms.Suhani Mathur Advs

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

The hearing has been conducted through video conferencing.

CM 41094/2021(exemption)

Allowed, subject to all just exceptions.

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1. This petition has been filed by the petitioner *inter alia* challenging the seizure of cash amounting to Rs.65 lakhs (Rupees Sixty Five Lakhs only) from the residential premises of the Director of the petitioner on 04.03.2021. The petitioner further challenges the letter dated 24.03.2021 issued by the respondent no.1 whereby the bank was directed to release the said amount of Rs.65 lakhs to the

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petitioner, however, only for payment of Government dues. The petitioner further claims that a sum of Rs.94,65,316/- (Rupees Ninety Four Lakhs Sixty Five Thousand Three Hundred Sixteen Only) deposited by it with the respondents has been erroneously recovered by the respondents from the petitioner without proper adjudication.

The petitioner further prays for a direction to the respondent to determine the tax, interest or penalty due from the petitioner and appropriate the said amount of Rs.94,65,316/- paid by the petitioner against the amount so found due.

2. It is the case of the petitioner that on 04.03.2021, the respondents carried out a search at the premises of the petitioner company located at D-5A/1, Ground Floor, Shiv Puri Extension, Chander Nagar, East Delhi, Delhi 110051. The respondents further carried out a search at the registered office premises of the petitioner company and sealed the said premises on the basis that the said address had not been disclosed in the Form GST Reg.-06. Stock lying in the said premises was also seized by the respondents.

3. The petitioner further claims that the respondent no.2 also carried out a search at the residential premises of the Director of the petitioner company situated at Jasola, New Delhi and during the search, seized an amount of Rs.65 lakh in cash.

4. The learned counsel for the petitioner vehemently argued that the Panchnama for the said search and seizure at the residential premises of the Director of the petitioner company was not supplied to either the petitioner or its Director. She further submits that under the

Central Goods Service Tax Act, 2017 (hereinafter referred to as the 'CGST Act'), the respondent no.3 had no authority to seize cash.

5. The learned counsel for the petitioner further submitted that on 04.03.2021, the respondents directed Mr.Puneet Bhudhiraja, the Director of the petitioner company to accompany the search party to respondent's office at CR Building, IP Estate, New Delhi without issuing any summons under Section 70 of the CGST Act. Mr. Budhiraja was illegally detained overnight in the office without any lawful justification and was released from unlawful custody only in the afternoon of 05.03.2021. She submits that due to coercive action of the respondents, an amount of Rs.33,99,236/- (Rupees Thirty Three Lakhs Ninety Nine Thousand Two Hundred Thirty Six Only) was deposited by the petitioner with the respondents on 09.03.2021.

6. The petitioner thereafter sought release of the cash amount illegally seized from the petitioner, however, the respondent no.1 vide impugned letter dated 24.03.2021 directed the release of the amount only for payment of Government dues. She submits that the said condition is extraneous to the provisions of the CGST Act and cannot be sustained.

7. The learned counsel for the petitioner further submits that the petitioner deposited a further sum of Rs.60,66,082/- (Rupees Sixty Lakhs Sixty Six Thousand Eighty Two Only) with the respondents on 25.03.2021 and in spite of such deposit, stock seized from the premises of the petitioner was released by the respondents only on 07.05.2021.

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8. She submits that by a letter dated 17.09.2021, the petitioner filed a detailed representation with the respondent no.1 to demonstrate that excess taxes had been recovered from the petitioner without following due process of law, however, till date neither any notice has been issued to the petitioner nor the tax liability determined by the respondents against the petitioner.

9. She submits that by an application dated 12.10.2021 filed under Section 67(10) of the CGST Act, the petitioner has also sought copies of the search proceedings, however, till date the same have not been provided to the petitioner.

10. She submits that as the deposit of tax was made under coercion, in absence of any proper adjudication and determination of tax liability against the petitioner, the same is liable to be refunded. She submits that instead of determining the tax liability, the respondents have issued the impugned letter dated 24.09.2021 claiming that the amount was voluntarily deposited by the petitioner under Section 74(5) of the CGST Act and the proceedings have been concluded against the petitioner. She reiterates that the amount had not been deposited voluntarily and in any case was without determination of tax and therefore, is liable to be refunded/adjusted.

11. On the other hand, the learned counsel for the respondent who appears on an advance notice, submits that the present petition is liable to be dismissed on the ground of concealment of facts. He submits that the Panchnama for affecting the seizure of Rs.65 lakhs from the premises of the Director of the petitioner was duly served on the said

Director and the receipt of the same has been acknowledged by the signing of the said Panchnama not only by the Director but also his wife. He has produced before us a copy of Panchnama. He further submits that the petitioner by a letter dated 24.03.2021 sought release of the fixed deposit of Rs.65 lakhs created out of the amount seized in the search of 04.03.2021. In the said request letter itself, the petitioner had undertaken to pay all tax liabilities along with applicable interest and penalty 'voluntarily'. It was pursuant to this request that the impugned letter dated 24.03.2021 was issued to the bank directing release of the fixed deposit of Rs.65 lakhs to the petitioner, albeit for payment of Government dues only. The petitioner never challenged the said condition and in fact voluntarily deposited the balance tax, interest and penalty amount of Rs.60,66,082/- with the respondents on 25.03.2021. It was on this deposit that the proceedings against the petitioner were closed under Section 74(5) of the CGST Act. He submits that the above documents have been intentionally concealed from this Court to set up a false case of coercion and the present petition, therefore, is liable to be dismissed on this short ground itself.

12. We have considered the submissions made by the learned counsels for the parties.

13. At the outset, we note that the petitioner has not disclosed in the petition the letter dated 24.03.2021 by which it had sought the release of the amount of Rs.65 lakhs seized from the residential premises of its director Mr.Puneet Budhiraja on 04.03.2021. The said letter is reproduced as under:

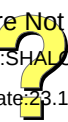
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“With due respect, I Puneet Bhudhiraja, Director of M/s VIJAY STEELCON PVT. LTD. D-5A/1, GROUND FLOOR, SHIV PURI EXTN., CHANDER NAGAR, East Delhi, Delhi, 110051 do hereby undertake that the Fixed Deposited amount of Rs.65,00,000/-, seized during search operation on 04.03.2021 from my residential premise will be utilized only for payment of Govt. tax dues w.r.t. ongoing investigation in the case of M/s VIJAY STEELCON PVT. LTD. Therefore, I request to release the Fixed Deposited amount of Rs.65,00,000/- to my Bank account details as mentioned below so that I can do the needful.

S. No.	Name of Beneficiary	Name of Bank	Bank Account No.	Bank IFSC
1.	M/s. VIJAY STEELCON PVT. LTD. PAN-AABCV0083E GSTIN-07AABCV0083E1ZN	ICICI Bank Ltd. Branch- Geeta Colony, New Delhi	426805000103	ICICI0004268

I undertake to pay all tax liabilities alongwith applicable interest and penalty voluntarily related to GST search dated 04.03.2021 and we do not want any Show Cause Notice in said matter issues.”

(Emphasis supplied)

14. The petitioner has also set up an apparently false case of the Panchnama not being provided to the petitioner. The copy of the Panchnama produced by the learned counsel for the respondents clearly bear the acknowledgment of receipt thereof by Mr. Budhiraja and his wife. We also find that the petitioner never raised a grievance in this regard till the letter dated 12.10.2021 from its counsel, where again it was not specifically raised in such terms.

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15. The above concealment is, therefore, enough to deny any relief to the petitioner in exercise of the extra-ordinary discretionary jurisdiction of this Court under Article 226 of Constitution of India.

16. Even otherwise, we find no merit in the present petition. Admittedly, the search at the residential premises of the Director of the petitioner company was carried out on 04.03.2021. The petitioner made no complaint to the respondents at the relevant time and till the letter dated 12.10.2021 of non-supply of Panchnama and other documents in respect of the search carried out at the premises. Clearly, this plea is being set up as an afterthought by the petitioner. As far as the power to seize cash is concerned, the same need not be adjudicated by us in the present petition for the reason that it is an admitted fact that on the basis of the representation/letter dated 24.03.2021 referred hereinabove, the cash amount so seized was released in favour of the petitioner. The said question, therefore, in the present petition is merely of an academic importance and is, therefore, left open to be adjudicated in an appropriate case.

17. As far as the condition of release of the amount is concerned, it is again admitted that based on the release of the amount, the petitioner went ahead and deposited an amount of Rs.60,66,082/- with the respondents towards its balance tax, interest and penalty outstanding. This issue is therefore, only of academic importance and in any case, due to the letter dated 24.03.2021 of the petitioner itself

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submitting to such condition, cannot be allowed to be agitated by the petitioner.

18. As far as the submission of the learned counsel for the petitioner that amount of Rs.94,65,318/- deposited by the petitioner with the respondent was not voluntary but due to exercise of coercion, we find no merit in the same. Admittedly, an amount of Rs.33,99,236/- was deposited by the petitioner on 09.03.2021. On the said date, even assuming the case of the petitioner of illegal detention of Mr. Budhiraja to be correct, there was no restrain on the petitioner by the respondents. In fact, the letter dated 09.03.2021 was followed by a detailed letter dated 11.03.2021 of the petitioner which not only set out the voluntary disclosure of the amount due from the petitioner but also sought release of Rs.65 lakhs so as to pay the balance amount of the tax due to the respondents. The said letter is reproduced herein below:

“This is in reference to the Panchnama drawn on 04.03.2021 in consequence to the search conducted on M/s Vijay Steelcon Pvt. Ltd. At D-5A/1, Ground Floor, Shiv Puri Extn., Chander Nagar, East Delhi-110051 under GST Act. The tax liability as assessed is as follows:

		Tax		Interest		Penalty		
S.No.	Particulars	CGST	SGST	CGST	SGST	CGST	SGST	Total
1.	Stock Godown	192,290	192,290	-	-	192,290	192,290	769,160
2.	Difference Stock	158,895	158,895	-	-	23,834	23,834	365,458
3.	Unrecorded Cash Sales	585,000	585,000	-	-	87,750	87,750	1,345,500
4.	ITC availed	294,225	294,225	121,199	121,199	44,134	44,134	919,116
5.	Wrong ITC availed	1,582,889	1,582,889	1,212,719	1,212,719	237,433	237,433	6,066,082

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	Total	2,813,299	2,813,299	1,333,918	1,33,918	585,441	585,441	9,465,316
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DRC-03 FILING

We have paid the following taxes vide DRC-03, the information is as follows:

1. Vide Debit Entry No.DC0703210032129 dated March, 9, 2021 following tax was paid for FY 2020-21 (Annexure 1) :

Type	Tax	Interest	Penalty	Total
CGST	972,736	2,617	309,357	12,84,710
SGST	972,736	2,617	309,357	12,84,710
		Total		25,69,420

2. Vide Debit Entry No.DC0703210032153 dated March, 9, 2021 following tax was paid for FY 2019-20 (Annexure 2):

Type	Tax	Interest	Penalty	Total
CGST	236,593	105,373	35,489	377,455
SGST	236,593	105,373	35,489	377,455
		Total		7,54,910

3. Vide Debit Entry No.DC0703210032166 dated March, 9, 2021 following tax was paid for FY 2018-19 (Annexure 3):

Type	Tax	Interest	Penalty	Total
CGST	14,066	8,084	2,110	24,260
SGST	14,066	8,084	2,110	24,260
		Total		48,520

4. Vide Debit Entry No.DC0703210032180 dated March, 9, 2021 following tax was paid for FY 2018-19 (Annexure 4):

Type	Tax	Interest	Penalty	Total
CGST	7,016	5,124	1,052	13,192
SGST	7,016	5,124	1,052	13,192
		Total		26,384

Total Paid (2569420+7544910+48520+26384)=33,99,234

Therefore, the Company has paid Rs.33,99,234 out of total liability of Rs.94,65,316.

Cash of Rs.65 lacs was seized on the date of the search, the same has already been taxed on unrecorded cash sales and tax has

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already been paid accordingly, we request you to release the aforementioned amount to make the payment of the balance amount of Rs.60,66,082”

19. Subsequently, by the letter dated 24.03.2021, which have been reproduced hereinabove, the petitioner clearly stated that the tax liability is being discharged by it ‘voluntarily’ and requested the respondents not to issue any Show Cause Notice in relation to the search and seizure undertaken by it on 04.03.2021. Clearly therefore, the tax amount has been deposited by the petitioner voluntarily and the case of coercion now being set up by the petitioner is an afterthought. This is also evident from the letter dated 18.08.2021 filed by the petitioner alongwith the present petition, the relevant portion of which is reproduced herein below:

“Ref: In reference to search conducted dated 4.3.2021, under GST Act, on M/s Vijay Steelcon Pvt. Ltd. At D-5A/1, Ground Floor, Shiv Puri Extension, Chander Nagar, East Delhi-110051, GSTIN:07AABCV0083E1ZN

In this regard it is humbly submitted that the brief facts of the case are that on 4th March, 2021, a search was conducted under the GST Act on M/s Vijay Steelcon Pvt. Ltd. (herein after referred as ‘assessee company’). That to buy peace of mind and to avoid any dispute or coercion with the GST Department, assessee company paid some taxes amounting to Rs.5629800/- in DRC -03 to the GST Department. However, later on after seeking legal opinion from some consultants in the matter, some glaring facts have surfaced and consequentially it has come to light that some excess taxes have inadvertently been paid by the assessee, which though cannot be levied as per well settled law. As your honour is aware that there cannot be ‘consent against the law’ and always ‘law shall take its own course’, therefore now the aforesaid company humbly prays and submits the following submissions before your honour, for kind consideration and better

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appreciation of facts, with a prayer to refund the excess taxes along with interest, in case it is found that excess taxes have inadvertently been paid or collected against the law or without authority of law not only in violation of GST Act but also against the Constitution of India.”
(Emphasis supplied)

20. In fact no plea of coercion was raised by the petitioner till the filing of the present petition.

21. Section 74 (5) of CGST Act states that a 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 of the CGST Act and a penalty equivalent to 15% of such tax on the basis of his own ascertainment of such tax. The effect of such deposit is contained in Section 74(6) which states that the proper officer, on receipt of such information from the assessee, shall not serve any notice under Section 74(1) of the CGST Act to such assessee. Sub-section (5) and (6) of Section 74 of CGST Act are reproduced herein below:

“(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.

22. Therefore, the effect of the above provisions is that the assessee can by making voluntary deposit of tax, interest and penalty avail the

benefit of restriction of penalty to only 15% of such tax. In the present case, the petitioner availed of this remedy and based thereon, proceedings against the petitioner arising out of the search and seizure activities carried out on 04.03.2021 were closed. This was also informed to the petitioner vide impugned letter dated 24.09.2021 of the respondents. The petitioner having availed of the relief, cannot now turn around and challenge the said proceedings.

23. In view of the above, we find no merit in the present petition. The same is dismissed with costs quantified at Rs.25,000/- to be deposited with Delhi High Court Legal Services Committee.

NAVIN CHAWLA, J

MANMOHAN, J

NOVEMBER 18, 2021
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