$~81

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

% *Date of decision: 19.12.2022*

\+ **W.P.(C) 6625/2022**

G4S SECURE SOLUTIONS (INDIA) PRIVATE LIMITED

..... Petitioner

Through: Mr Manuj Sabharwal, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME-TAX (OSD) CIRCLE 10(1), DELHI & ORS. ..... Respondents

Through: Mr Abhishek Maratha, Sr. Standing Counsel.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MS JUSTICE TARA VITASTA GANJU
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This writ petition is directed against the order dated 26.03.2022 issued under Section 148A(d) of the Income Tax Act, 1961 [in short, "the Act"].

1.1 Besides this, challenge is also laid to the consequential notice of even date i.e., 26.03.2022 issued under Section 148 of the Act.

2. A perusal of the notice dated 10.03.2022 issued to the petitioner under Section 148A(b) of the Act shows, that the principal allegation against the petitioner is, that was involved in the issuance of "fake/bogus invoices" by an entity going by the name Flash Forge Pvt. Ltd. [in short, "FFPL"]. The core of this allegation is captured in the annexure appended to the said notice.

2.1 For the sake of convenience, the same is extracted hereinafter:

"In this case, information has been received, brief of which (are which) are as under: -

"The incident report generated by CGST authorities indicate that M/s Advance Computers and Mobiles India Pvt Ltd (GSTIN NO. 27AAMCA5425A1ZZ) (PAN: AAMCA5425A) is engaged in issuing/generating/providing /fake/bogus invoices for passing of fraudulent input tax credit without supply of goods.

The information shared pertains to 12 entities of which in case of only 6 entities, information of entries provided by issuance of fake invoices pertaining to FY 2017-18relevant to AY 2018-19 are found. The GST returns filed by these six parties are downloaded and information pertaining to beneficiary PANs are summarized as under.

Sl. No.	Name of the entity	Whether information pertains to AY 2018-19 is available
1	M/s Advance Computers and Mobiles India Pvt. Ltd.	Data available
2	M/s Madurai Multi Facilities Services Pvt. Ltd.	Data available
3	Shri Nilesh Yogesh Jagiwala (M/s Germanium Trading Pvt. Ltd.)	Data available
4	M/s One Point One Solutions Ltd.	Data available
5	**M/s Flash Forge Pvt. Ltd.**	**Data available**
6	M/s Himadri Foods Ltd.	Data available

The entity-wise profiling was done on Insight Portal and GST return filed for FY 2017-18 shows these party have issued bogus invoices."

On basis of above information, it is observed that the assessee company has made transaction amounting to Rs. 37,33,626/-with M/s Flash Forge Pvt Ltd which is company engaged in issuing fake/bogus invoices.

Detail investigation was carried out by the CGST and on receipt of input from them entity wise profiling was done by the Investigation

> *wing of the department through Insight portal of the department. It was found that above mentioned entity **M/s Flash Forge Private Limited**, during the year has provided bogus entries/billing in lieu of commission to the tune of Rs. 328.15 crs. It is also noted that the assessee company had a purchase transactions of Rs. 37,33,626/- with the above party which is nothing but a bogus transaction.*
>
> *From the above discussion, it is established that the assessee company is one of the beneficiaries of bogus billings / entries.*
>
> *Therefore, an amount of Rs. 37,33,626/- has escaped assessment for the A.Y. 2018-19 which needs to be brought to tax by issuing notice u/s 148 of the Income Tax Act, 1961.*
>
> *In view of above, you are hereby **asked to show cause** as to why a notice u/s 148 of the Income Tax Act, 1961 may not be issued against you on the basis of information and further verification from record suggesting that the income chargeable to tax has escaped assessment for the A.Y. 2018-19."*

3. A perusal of the aforesaid extract would show, that according to the respondents/revenue, an entity going by the name Advance Computers and Mobiles India Pvt. Ltd. was engaged in issuing/generating/providing fake/bogus invoices for enabling beneficiaries to fraudulently claim input tax credit without supply of goods.

3.1 It appears, that the information was generated by the statutory authorities constituted under the Central Goods and Services Tax Act, 2017.

3.2 It also appears, that information was received *vis-à-vis* twelve entities, out of which insofar as six entities are concerned, the information related to Financial Year (FY) 2017-2018 (AY 2018-2019).

3.3 One of these entities was FFPL.

3.4 It is on this score, that an allegation was levelled, that the petitioner had entered into a purchase transaction with FFPL, worth Rs. 37,33,626/-.

4. Since the petitioner was called upon to file a response to the allegation, a reply dated 15.03.2022 was furnished.

4.1 The petitioner took the position that it was in the business of providing security services to its customers.

4.2 It was also asserted by the petitioner, that it had not entered into any purchase transaction with FFPL. Besides this, it was specifically averred, that the revenue earned from services rendered was offered to tax by the petitioner.

4.3 With the reply, a chart was appended, which gave details, such as the month and the year in which security service was rendered, along with the basic amount claimed towards services rendered, along with tax.

5. A perusal of the chart would show, that during the period in issue, the cumulative value of the invoices raised by the petitioner was Rs. 37,33,626/- (basic amount, excluding tax). Therefore, the petitioner, in sum, took the position, that firstly, it had not entered into any purchase transaction, as alleged by the respondents/revenue, and secondly, it had, in fact, rendered services in the relevant period amounting to Rs. 37,33,626/- and that this amount had been disclosed, on which tax had been paid.

6. A perusal of the impugned order passed thereafter on 26.03.2022 would show, that the assessing officer made a bald assertion, that the explanation and supporting documents were not found satisfactory and conclusive.

6.1 Accordingly, the assessing officer went on to hold that all transactions amounting to Rs. 37,33,626/- were executed with a bogus entity i.e., FFPL, and therefore, were in the nature of "sham transactions."

6.2 Based on this logic, the conclusion reached *via* the impugned order was, that the said amount i.e., Rs. 37,33,626/- had escaped assessment for AY 2018-2019.

7. Mr Abhishek Maratha, who appears on behalf of the

respondents/revenue, says that there was no company such as FFPL in existence.

7.1 The invoices referred to by the petitioner, based on which it was sought to be projected, that it had rendered security services was make-believe, and therefore, at this stage, there should be no interference with the impugned order.

8. On the other hand, counsel for the petitioner has drawn our attention to the document filed by the respondents/revenue, which is titled "Case Related Information Detail."

8.1 This document adverts to not only the petitioner, but also M/s Advanced Computers and Mobiles India Pvt. Ltd.

9. The details contained therein formed the basis of issuance of section 148A(b) notice to the petitioner.

10. Interestingly, entities and companies which FFPL appears to have provided accommodation entries not only includes the petitioner but certain public limited companies/PSUs such as Bharat Heavy Electricals Ltd., Indian Oil Corporation Ltd., HMT Machine Tools Ltd., Hindustan Shipyard Ltd., Hindustan Aeronautics Ltd., Hindustan Petroleum Corporation Ltd., Godrej and Boyce Manufacturing Company Ltd. and Larsen and Toubro Ltd.

10.1 There is no material to suggest, that accommodation entries were provided by FFPL to these companies.

11. We may also note, that in this particular case, notice under section 148A(b) was issued even without conducting an enquiry, as required under Section 148A(a) of the Act.

11.1 The said provision requires approval of the specified authority for conducting an enquiry.

12. In our view, had such an enquiry been conducted before issuance of the notice, then the kind of flaws that have emerged, to which we have made a reference above, would not have, possibly, occurred.

13. As noticed above, instead of conducting an independent enquiry, the respondents/revenue relied upon the information supplied by the CGST authorities.

14. Thus, for the forgoing reasons, we are inclined to quash the impugned order dated 26.03.2022 passed under Section 148A(d) of the Act, as also the consequential notice dated 26.03.2022 issued under Section 148 of the Act.

14.1 It is ordered accordingly.

15. The respondents/revenue will, however, have the liberty to take the next steps in the matter, albeit, in accordance with the law.

16. The writ petition is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

DECEMBER 19, 2022 / tr