

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

CWP No.26529 of 2022

Date of decision: 24.05.2023

M/s Samyak Metals Pvt. Ltd.

.....Petitioner

Versus

Union of India and others

.....Respondents

**CORAM:HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Sandeep Goyal, Advocate,
for the petitioner.

Mr. Tajender Joshi, Senior Standing Counsel,
for the respondents.

Ritu Bahri, J.

Petitioner is seeking a writ in the nature of mandamus directing respondent No.3 to refund the amount, which was recovered illegally from the petitioner vide Form GST DRC-03 dated 26.02.2021 (Annexure P-3) without issuing any show cause notice or passing any order under Section 74 of the entral GST Act and Haryana GST Act, 2017.

The petitioner is engaged in the business of manufacturing of aluminium ingots. For the purpose of Goods and Service Tax, the petitioner is registered under the provisions of Central GST Act/Haryana GST Act, 2017 vide GSTIN 06AAHCS8928H1ZY (Annexure P-1). The business premises of the petitioner were searched on 25.02.2021 by the officers of Central GST Commissionerate, Faridabad, including respondent No.3. During the course of search, respondent No.3 examined the purchase ledger and asked about the purchases made by the petitioner from one M/s D.G. Enterprises, Faridabad. No document was resumed during the course of the search. The *Panchnama* drawn at the time of search is annexed as Annexure

P-2. It is stated that after analyzing the ledger of M/s D.G. Enterprises, petitioner was forced to deposit tax in lieu of the Input Tax Credit claimed by it on the purchases made from M/s D.G. Enterprises to the tune of Rs.35,73,147/- each under the Central GST Act/State GST Act, including interest amounting to Rs.1,82,255/- and penalty amounting to Rs.4,42,291/- vide Form GST DRC-03 dated 26.02.2021 (Annexure P-3).

Grievance of the petitioner is that even after depositing the above said amount, no GST DRC-04 has been issued by respondent No.3. Amount of Rs.71,46,294/- has been recovered by the respondents without passing any adjudicating order or following any procedure under Sections 73/74 of the Act.

Upon notice, reply dated 01.02.2023 has been filed on behalf of respondent Nos.1 to 3, submitting therein that after conducting the search, *Panchnama* dated 25.02.2021 was drawn and statement of Sh.Ankur Jain, Director of M/s Samyak Metals Pvt. Ltd. was recorded under Section 70 of CGST Act, 2017 before Superintendent CGST Anti-Evasion (Annexure R-1). Sh. Ankur Jain, Director of the firm had admitted that they had accepted only bills from M/s DG Enterprises without goods, for which, he was ready to pay/reverse the duty amount along with interest and penalty as applicable. Hence, he had voluntarily paid total amount of Rs.35,73,147/- (Tax of Rs.29,48,601/-, interest of Rs.1,82,255/- and penalty of Rs.4,42,291/-) under Section 74(5) of CGST Act, 2017.

Heard, learned counsel for the parties.

Reference can now be made to a judgment passed by this Court in

Modern Insecticides Ltd. and another vs. Commissioner, Central Goods and Service Tax and another, CWP No.8035 of 2021, wherein a similar

department had conducted a search in the factory premises of the petitioner (therein) and resumed the entire record lying there. On 07.03.2020, they got deposited a sum of Rs.39,15,583/-. Another search was conducted on 15.01.2021 and at that time, the officials of the department took away Director and Chartered Accountant of the petitioner-company to their office at Rishi Nagar, Ludhiana. No notice under Section 74 (1) of the CGST Act was served even after expiry of two years. The Govt. instructions dated 25.05.2022 issued by the CBIC with respect to the GST investigation were also examined, which had been issued keeping in view the observations made by the Gujarat High Court in **Bhumi Associate vs. Union of India**, SCA No.3196 of 2021 (decided on 16.02.2021). As per the said instructions, no recovery of tax should be made during search, inspection or investigation unless, it is voluntary. In order to avoid harassment to the person, whose premises has been conducted, the voluntary payment in prescribed form i.e. GST DRC-03 can be made after the day of the search. The above instructions have been issued to avoid unnecessary harassment caused to the assessee. The Delhi High Court followed the aforesaid judgment while allowing a petition in **Vallabh Textiles vs. Senior Intelligence Officer and others**, 2022 SCC OnLine Del 4508. In that case, the Delhi High Court examined the provisions of Section 74 of the CGST Act and held that deposit of tax made by the assessee during search was not voluntary and the amount cannot be retained, if no summons had been issued under Section 74 (1) of the CGST Act. Notice under Section 74 (1) of the Act has to be issued within a period of limitation.

In the facts of the present case, after the search was conducted on 25.02.2021, amount of Rs.35,73,147/- (Tax of Rs.29,48,601/-, interest of Rs.1,82,255/- and penalty of Rs.4,42,291/-) was deposited by the petitioner

under Section 74 (5) of CGST Act, 2017. As per Rule 142 (2) of the CGST Rules, when a payment is made in FORM GST DRC-03, the proper officer has to issue acknowledgment, accepting the payment made by the said person in FORM GST DRC-04. In the present case, the said payment was made way back on 26.02.2021. Till date, neither they have issued FORM GST DRC-04 nor issued any notice under Section 74 (1) of the CGST Act. The respondents have not followed the Govt. instruction No.01/2022-23 dated 25.05.2022 (Annexure P-10) issued by the CBIC. In these instructions, it is clarified that there is no bar on the taxpayers for voluntarily making the payments on the basis of ascertainment of their liability on non-payment/short payment of taxes before or at any stage of such proceedings. It is the duty of the officer to inform the taxpayers regarding the provisions of voluntary tax payment through DRC-03. However, in the present case, as per these instructions, the petitioner has deposited the amount of Rs.35,73,147/-, but the officer has not issued DRC-03 till date. Neither the department has followed the provisions of Rule 142 (2) of the CGST Rules nor has issued any notice under Section 74 (1) of the CGST Act.

In view of the above discussion, the respondents are directed to return the amount in question to the petitioner along with simple interest at the rate of 6% per annum from the date of deposit till the payment is made. The amount will be refunded to the petitioner within a period of two weeks from the date of receipt of certified copy of this judgment.

Petition stands allowed accordingly.

(RITU BAHRI)
JUDGE

(KULDEEP TIWARI)
JUDGE

24.05.2023
ajp

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No