IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8614 OF 2022

M/s. Shiva Structures Pvt. Ltd.,
& M/s Sandeep Jagdhane and Associates
(SSPL SJA) Plot no. 19,
Vinayak Housing Society,
N-8, CIDCO, Aurangabad .. Petitioner

Versus

1] Union of India
Through its Secretary
Ministry of Finance,
Department of Revenue,
North Block, New Delhi

2] Central Board of Indirect Taxes and Customs,
Through its Principal Officer,
North Block New Delhi

3] The Commissioner,
CGST and Central Excise
N-5, Town Centre, CIDCO,
Aurangabad

4] The Superintendent (Prev. GR-VI)
CGST and Central Excise
N-5, Town Centre, CIDCO,
Aurangabad .. Respondents

...
Advocate for petitioner : Mr. Ramesh N. Thete
DSGI for respondent no. 1 : Mr. Ajay G. Talhar
Standing Counsel for respondents no. 2 to 4 : Mr. D.S. Ladda
...

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

DATE : 09 OCTOBER 2024

ORDER (MANGESH S. PATIL, J.) :

Petitioner company has been duly registered with and allotted a GSTIN number.

2. Officers of the CGST visited the petitioner's premises to carry out investigation / enquiry on the basis of specific intelligence. The petitioner is stated to have agreed for short payment of the GST to the tune of Rs. 4,47,53,244/-. The very day it paid Rs.3,00,00,000/-. Subsequently, it was called upon to furnish the record by respondent – CGST office on the next day, along with the record. It submitted the record on 07-03-2022. Another summons was issued to it and accordingly, he attended the CGST office of the respondent on 04-04-2022. Statement of its officer was recorded on 13-04-2022, alleging that it had voluntarily accepted the liability and having paid Rs.3,00,00,000/- by challan on 18-02-2022. By letter dated 05-05-2022, the CGST called upon him to pay the remaining amount of Rs.1,47,53,244/- together with interest and by referring to the statement recorded on 13-04-2022.

3. Aggrieved by such action, writ petition has been preferred seeking a declaration that the petitioner is entitled to ITC and in the alternative for refund of Rs.3 Crore, which were paid under protest and further directing the respondent to issue appropriate show cause notice.

4. Learned advocate for the petitioner, on instructions, submits that it is not intending to pursue the rest of the prayers and would be satisfied if its claim for refund of Rs. 3 Crore, is granted.

5. Learned advocate for the respondent – CGST, on written instructions, would submit that appropriate enquiry is being undertaken by issuing show cause notice on 24-11-2023, raising a specific demand of GST of Rs.4,47,53,244/- under section 74 of the Central Goods and Services Tax Act, 2017 and the adjudication process is under way.

6. In the light of above, when it is apparently a matter wherein the petitioner either was made to deposit or had deposited the money even before adjudication of its liability to pay the tax, such payment cannot be treated as a voluntary one; more so, when it was made on the very date when the petitioner's premises was visited by the revenue officials.

7. Suffice for the purpose to refer to the decision of this Court in the matter of ***M/s. Cleartrip Pvt. Ltd. Vs. The Union of India; (2016) 42 STR 948***.

8. The writ petition is allowed partly.

9. The respondent – CGST shall forthwith refund the amount of Rs.3,00,00,000/- to the petitioner.

10. If the amount is not refunded within two weeks, it shall carry simple interest @ 6% per annum.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/