IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-*11207-2024(O&M)*
Date of decision:- 14.05.2024

Nectar Life Sciences Ltd. ....Petitioner

vs.

Union of India and others ...Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Akshay Kumar Goel, Advocate and
Mr. Abhishek Rastogi, Advocate
for the petitioner.

Mr. Sourabh Goel, Sr. Panel counsel with
Ms. Shivani Sharma and Ms. Geetika Sharma, Advocates
for the respondent-department.

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<u>SANJEEV PRAKASH SHARMA, J. (Oral)</u>

In the present writ petition, the petitioner has prayed as under:-

"(a) Quash the Order-in-Original dated 21.02.2024 (Annexure P-1) passed by Respondent No 3 to the extent it deals with the issue of "wrong availment / passing on of input tax credit" and direct the Respondents to refund INR 13,00,00,000/- paid by the Petitioner (in respect of the above issue) under protest, with interest;

(b) Quash the Order-in-Original dated 21.02.2024 (Annexure P-1) passed by Respondent No 3 to the extent it deals with the issue of "wrong availment of IGST refund under Advance Authorisation scheme" and direct the Respondent Nos 3 and 4 to transfer Show Cause Notice dated 01.07.2022 (Annexure P-2) in the call book, till disposal of CWP No 7072 of 2022 by this Hon'ble Court;

(c) Declare Notification No. 09/2023-Central Tax dated

31.03.2023 (Annexure P-9) issued by Respondent No 2 as ultra-vires the provisions of the CGST Act, for being incapable of being issued under Section 168A of the CGST Act;"

2. Learned counsel for the petitioner submits that the petitioner had earlier approached this Court by way of filing CWP No. 7077-2022 assailing the validity of Rule 96(10) of CGST Rules as inserted vide notification dated 09.10.2018**,** which is pending. While the said petition was pending, the final order was passed on 21.02.2024 (Annexure P-1).

3. Learned counsel for the petitioner submits that the notice has been issued under Section 74 of the CGST Act whereas the same ought to have been issued under Section 73 of the CGST Act and therefore the impugned order is without jurisdiction. He has also challenged the notification dated 31.03.2023 extending the limitation of issuing the notice under Section 73 of the CGST Act and submits that the said issue is pending before this Court in other cases, wherein interim orders had already been passed. Therefore, he submits that this case should also be heard along with those cases.

4. The order passed by us in one of the other cases has also been annexed along with the petition in support of his contention. We find that the order challenged before this Court is essentially the order dated 21.02.2024 and challenge thereto is on merits. Since, the provision is available for filing of appeal before the Appellate Authority in terms of Section 107 of the CGST Act, we do not find it fit to examine the same with respect to jurisdiction of the impugned order, as the appellate authority would be examining all the questions including questions of facts as well as question of law at the first stage.

5. In view thereof, we would not entertain the present petition with regard to the orders under challenge. So far as the question regarding initiation of proceedings under Section 74 of the CGST Act instead of Section 73 of the CGST Act is concerned, we are of the firm view that while examining the questions of facts, the questions of law can also be examined by the Appellate Authority, who can give finding in this regard. The issue relating to challenge of notification dated 31.03.2023 does not arise in the present case, as notice has not been issued to the petitioner under Section 73 of the CGST Act. The order passed by us relates to a case where proceedings were undertaken under Section 73 and not like the present and therefore distinguishable.

6. In view thereof the present petition is misconceived. The same is accordingly dismissed with a liberty to the petitioner to file an appeal before the concerned appellate authority, if so advised.

(SANJEEV PRAKASH SHARMA)
JUDGE

14.05.2024
G Arora

(SUDEEPTI SHARMA)
JUDGE

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