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

% *Date of Decision: 20.08.2024*

\+ **W.P.(C) 4273/2024 and CM No.17509/2024**

AIMLAY PRIVATE LIMITED (THROUGH THE DIRECTOR SH. RAKESH GUPTA) & ORS. .....Petitioners

Through: Ms Beenashaw Soni, Mr Jitin Singhal and Ms Mansi Jain, Advocates.

versus

COMMISSIONER OF CENTRAL TAX (DELHI WEST) & ORS. .....Respondents

Through: Mr Anurag Ojha, Senior Standing Counsel with Mr Subham Kumar and Mr Kumar Abhishek, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE SACHIN DATTA

VIBHU BAKHRU, J. (*ORAL*)

1. The present petition was briefly heard on 25.07.2024 and the following order was passed.

> "**W.P.(C) 4273/2024**
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> 4. The petitioners have filed the present petition, *inter alia,* praying as under:
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> > "*(a) to issue a writ of certiorari or any other appropriate writ, order or directions, quashing the orders dated 20.11.2023 passed by the learned Commissioner, Central Tax, Delhi West [Respondent No.1] whereby he provisionally attached the current Bank Account No. 082805001395 of the petitioner no.1 and Bank Account No. 082805002086 of the petitioner no. 2 maintained at ICICI Bank Ltd, Rohini, Sector-24, New Delhi [IFSC Code ICIC0000828];*

(b) to issue a writ of certiorari or any other appropriate writ, order or directions, quashing the orders dated 20.11.2023 passed by the learned Commissioner, Central Tax, Delhi West [Respondent No.1] whereby he provisionally attached the Saving Bank Account No. 30929377425 and Fixed Deposits No.42333497965 & 42385934961 of the petitioner no. 3 maintained at State Bank of India, Rohini, Sector-24, New Delhi [IFSC Code SBINOO 11551];

(c) to issue a writ of mandamus or any other appropriate writ, order or directions to the respondents to return the assets including laptops, CPUs, Mobile Phones etc. which were seized as per seizure memos dated 16.11.2023 at the officer and residential premises of the petitioners;

(d) to issue a writ of mandamus or any other appropriate writ, order or directions to the respondents to refund an amount of Rs. 22,00,000/- along with interest to the petitioners;

(e) to issue a writ of mandamus or any other appropriate writ, order or directions, to the respondents directing them to carry out their investigations in accordance with law and more specifically to videograph the statement recording process of the petitioners and further not to harass the petitioners and not to insist upon the petitioners or their group company to deposit any amount during investigation without there being any final determination of any GST liability and thereby conduct a fair investigation."

5. It is apparent from the above that the reliefs claimed by the petitioners in the present petition are three-fold. First, the petitioners challenge the orders dated 20.11.2023 (hereafter *the impugned orders*), passed by the Commissioner, Central Tax, Delhi West [Respondent No.1 (hereafter *the Commissioner*)], provisionally attaching the bank accounts of petitioner no.1 and it's Directors'. Second, the petitioners prays that directions be issued to the Commissioner for returning the petitioners' assets, including laptops, CPUs, Mobile Phones etc., which were seized during the search and

seizure operations conducted on 16.11.2023. And third, the petitioners prays that directions be issued to the respondents to refund an amount of ₹22,00,000/-, which the petitioners claim that they were coerced to deposit during the course of search conducted by the respondents.

6. In so far as the petitioners' challenge to the impugned orders freezing the bank account is concerned, this Court had by an order dated 20.03.2024 permitted the petitioners to make an application to the Commissioner to permit limited operations of their bank accounts to enable petitioner no.1 company to continue as a going concern. The representative of the petitioners was directed to appear before the concerned officer on 02.04.2024 at 02:30 PM for the said purpose.

7. In compliance with the said directions, the petitioners had appeared before the Commissioner and advanced submissions. Thereafter, the Commissioner passed a speaking order dated 16.04.2024 setting out in detail, its reasons for not acceding to the petitioners' prayer and justifying the impugned orders for freezing the bank accounts in question.

8. In view of the above, learned senior counsel for the petitioners does not, at this stage, press any relief regarding the freezing of the bank accounts.

9. The second relief sought by the petitioners is regarding return of the laptops, CPUs, Mobile Phones and other documents, which were seized during the search and seizure operations.

10. Concededly, the petitioners are entitled to make copies of documents under Section 67(5) of the Central Goods and Services Tax Act, 2017 (hereafter the *CGST Act*) and extracts of any documents seized under Section 67(2) of CGST Act.

11. In terms of Section 67(3) of CGST Act, all documents, books, or things seized under Section 67(2) of CGST Act, are required to be returned to the person from whom the same are seized within the period not exceeding 30 days from the date of issuance of the notice.

12. The Commissioner had considered the said provisions

and permitted the petitioners to obtain copies of the documents and data on the seized assets/devices on a mutually convenient date.

13. In these circumstances, the Commissioner may retain the documents, records, laptops, CPUs, and Mobile Phones which were seized but only till the time, the same are required and in any event not later than 30 days after issuance of notice, as required under Section 67(3) of the CGST Act, 2017.

14. In the meanwhile, the Commissioner shall ensure that copies of the documents and data on devices available in the mobile phones, CPUs, laptops and other records, which were seized are made available to the petitioners.

15. It is submitted on behalf of the petitioners that although the petitioners have provided a hard disk of 01 Terabyte, the respondents are compelling the petitioners to give further hard disks.

16. We request the Commissioner to examine this aspect and ensure that the data recorded on the devices is not withheld from the petitioners.

17. The third issue to be examined is whether the petitioners are entitled to the refund of Rs.22,00,000/- which, the petitioners claim, they were compelled to deposit during the course of the search and seizure raid.

18. The learned counsel for the petitioners has referred to the decision of this court in W.P(C) 7860/2022 captioned ***M/s Uflix Industries v. The Additional Director General, Directorate of Revenue Intelligence & Ors***. ***decided on 15.02.2023***, as well as the decision of this Court in W.P.(C) 9834/2022 captioned ***Vallabh Textiles v. Senior Intelligence Officer decided on 20.12.2022***, in support of its contention that the amounts deposited are required to be returned to the petitioners.

19. Mr. Ojha, learned counsel appearing for the respondents, contests the said prayer. However, it is seen that the counter-affidavit filed by the respondents is not on record.

> The respondents shall ensure that the same is placed on record before the next date of hearing.
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> 20. List for hearing on the aforesaid question on 20.08.2024, the date already fixed."

2. Thus, the limited question to be addressed is whether the petitioners are entitled to refund of ₹22,00,000/-, which they claim was deposited under compulsion.

3. The learned counsel appearing for the petitioners points out that the challan itself indicates that the deposit was made under protest and in presence of the Goods and Services Tax (GST) Officer. She submits that the GST Officer had compelled the Director of petitioner nos. 1 and 2 (petitioner no.3 - Mr Rakesh Gupta) to make the deposit. He had coerced him to go to the bank and withdraw the money from his personal bank account and deposit the same for the credit of petitioner no.1 company.

4. Mr Ojha, learned counsel appearing for the respondents disputes the same.

5. One of the questions that arises as to what was the necessity of the GST Officer to accompany Mr Rakesh Gupta (petitioner no.3) to the bank.

6. Mr Ojha submits that the officer would have done so to submit a letter to the bank in order to facilitate Mr Rakesh Gupta to withdraw the money from his bank account. He submits that this would be necessary since the bank accounts of the directors of petitioner nos. 1 and 2 were attached.

7. He also points out that the deposit was made not during the course of search and seizure but after the statement of director, Mr Rakesh Gupta, was recorded.

8. It is relevant to note that the challan also indicates that the deposit is voluntary against the entry cause of payments.

9. Given the contentious issues, we do not consider it apposite to issue any directions for refund of the deposit in these proceedings. However, we clarify that the petitioners would be entitled to apply for refund of the same in accordance with law without waiting for the adjudication of the show cause notice.

10. Insofar as the petitioner's request for return of the articles and documents seized during the course of the proceedings are concerned, Mr Ojha states that all hard disks and other articles have been returned except two laptops. He submits that two laptops have been stolen from the office of the GST Authorities and an FIR in this regard had been lodged.

11. We clarify that all rights of the petitioners to seek compensation for the same is reserved.

12. No further orders are required to be passed in this petition. The same is disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

AUGUST 20, 2024
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