2024:DHC:6799-DB

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

% *Date of Decision : 05.09.2024*

\+ **W.P.(C) 12389/2024 & CM APPL. 51554/2024**

SH.TRILOK CHAND SHARMA .....Petitioner
Through: Ms Stuti Jain, Ms Akshu Jain and Ms Vishwa, Advocates.

versus

UNION OF INDIA & ANR. .....Respondents
Through: Mr Satya Ranjan Swain, SPC & Mr Kautilya Birat, Advocate for R1/UOI.
Mr R Ramchandran, Sr SC for R2.

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

VIBHU BAKHRU, J. (*ORAL*)

1. The petitioner has filed the present petition, *inter alia,* praying that directions be issued to the respondents to refund a sum of ₹1,01,87,544/- which, the petitioner claims, was deposited under coercion and protest.

2. It is the petitioner's case that the petitioner had received the summons dated 04.11.2023 under Section 70 of the Central Goods and Services Tax Act, 2017 (hereafter *the CGST Act*) and called upon the petitioner to appear before the concerned officer on 06.11.2023 at 11:15 AM. It stated that since the petitioner was hospitalised a few days ago due to cardiovascular diseases and had undergone angioplasty and stenting, he could not appear before the concerned officer on 06.11.2023. However, the authorised signatory of the petitioner had attended the office of respondent no.2 on said date. It is

alleged that he was detained till 10:00 PM. The petitioner states that it is the respondent's allegation that the petitioner had availed inadmissible Input Tax Credit (ITC) and therefore, the same was required to be deposited.

3. Mr Ramchandran, the learned counsel appearing on behalf of the respondents disputes the same. He has handed over a copy of the letter submitted by the petitioner's authorised representative, which indicates that he had sought time of 15 to 20 days to submit a response to the allegations. He submits, on instructions, the allegation that the authorised signatory of the petitioner was detained till 10:00 PM is baseless and an afterthought.

4. The petitioner claims that he deposited a sum of ₹13,72,398/- out of ₹88,21,105/- which was orally demanded by the respondent, under protest. After the said deposit was made, the respondent once again issued summons under Section 70 of the CGST Act for making further enquiries and called upon the petitioner to appear before the concerned officer on 28.11.2023 along with the documents. The petitioner claims that, pursuant to the said summons, the petitioner had submitted all documents. This fact is also disputed by the learned counsel for the respondent. He states that all relevant documents have not been submitted as yet. The petitioner claims that his authorised signatory attended the office of the concerned officer of the respondent on 28.11.2023 as well as on 29.11.2023. On these occasions as well, oral demands were made to deposit the remaining amount out of a total amount of ₹88,21,105/-.

5. The petitioner states that it succumbed to the coercion, and on 29.11.2023 deposited a sum of ₹33,41,441/- under protest. The petitioner

also sent an email dated 02.12.2023 confirming that it deposited the said amount under protest and would deposit the balance amount also, under protest, within a period of one month.

6. The petitioner alleges that he continued to receive telephonic threats and demands by the officers for depositing the balance amount. Accordingly, the petitioner deposited a sum of ₹54,73,705/- under protest on 29.01.2024.

7. Thereafter, respondent no.2 sent a letter dated 02.02.2024 calling upon the petitioner to deposit the duty liability along with applicable interest and penalty at the earliest. The contents of the said letter are reproduced below:-

> "To
> M/s Tara Chand Sumit Construction Company,
> GSTIN:07AADPC8747P4Z4
> GROUND FLOOR, H.NO. 55, DDA FLATS TODAPUR,
> DELHI, Central Delhi, Delhi, 110012
> **Sub: - Payment of pending duty liability alongwith applicable Interest/Penalty- reg.**
>
> Please refer to the subject cited above.
>
> 2. In this regard, it is to inform you that out of total detection of 1.04 Crore (so far), you have deposited 1.01 crore, as on date.
> 3. It is therefore, requested that pending duty liability alongwith applicable interest & penalty, may be deposited at the earliest.
> 4. This issues with the approval of Joint Commissioner (Anti Evasion).

(Deepak Sharma)
Superintendent
Anti Evasion, Gr-4
CGST Delhi South Commissionerate"

8. Mr Ramchandran, the learned counsel appearing for the respondent is unable to point out any statutory provision which requires issuance of such letters to tax payers. He submits that the letter was sent only because the authorised signatory of the petitioner had expressed his willingness to pay the tax liability, which was detected.

9. As noted above, it is the petitioner's case that the amount was deposited under coercion and it had no outstanding tax liability that was required to be discharged. This is disputed by the respondent and it is stated that the amount was deposited voluntarily.

10. It is material to note that the deposits of tax were not made during the course of any raid or while the petitioner or any of his employees were in custody of the respondent. According to the petitioner, he was coerced to deposit the tax demanded under the threat that the registration would be cancelled. Clearly, the petitioner could have availed remedies at the material time in respect of such alleged threats.

11. We do not consider it necessary to conduct any enquiry whether the amount as deposited by the petitioner was under coercion or voluntarily. However, we consider it apposite to observe that in the event the petitioner claims that it has deposited the tax in excess of his liability, the petitioner is not remediless and can seek refund in accordance with law.

12. Needless to state if any such application is made, the same would be considered in accordance with law.

13. The petition is disposed of with the aforesaid observation. Pending applications also stand disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

SEPTEMBER 05, 2024
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Click here to check corrigendum, if any