Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 17770 OF 2024

Afzal Husain Altaf Husain Saiyed Prop. of M/s. Devine Impex …Petitioner

Versus

Union of India through The Office of Prin. Commissioner of Central Tax, Mumbai Central & Ors …Respondents

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Mr Pradeep Purohit, *i/b PD Jain & Co, for the Petitioner.*
Mr Karan Adik, *with SD Deshpande & Parimal Wagh, for the Respondents.*

CORAM M.S. Sonak &
Jitendra Jain, JJ.
DATED: 24th June 2025.

PC:-

SHEPHALI SANJAY MORMARE

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1. This Petition challenges an order dated 24th May 2024 passed in Appeal whereby the original order dated 11th January 2024 canceling the Petitioner's registration has been confirmed.

2. The Petitioner has approached this Court since the GST Tribunal is not functioning.

3. Mr Purohit, learned counsel for the Petitioner submits that the registration has been cancelled under Section 29(2)(e) of the CGST Act, 2017 which is not attracted in the present case since at the time of obtaining the registration, the same was not obtained by means of fraud, willful misstatement or suppression of facts. He further submits that Petitioner has denied the admissions in the statements made before the authorities on issuing the fake ITC and Invoices. He, therefore, submits that since the provisions of Section 29(2)(e) of the CGST Act, 2017 are not attracted, the orders passed by both the authorities are required to be quashed and set aside.

4. Mr Adik, learned counsel for the Respondents, submits that the Petitioner has miserably failed to provide any documents in support of his claim for availing the ITC although in the first round of litigation before this Court, the matter was remanded for this very reason. In any case, he submits that the Order-In-Original ("OIO") whereby the registration is cancelled, refers to Section 29(2) of the CGST Act, 2017 and not Section 29(2)(e) and, therefore, the submission made by the Petition on this count is incorrect. He submits that as per Rule 21 of the CGST Rules, 2017, various circumstances have been prescribed for cancellation of the registration and in the instant case, the Petitioner's case falls under Rule 21(b) and (e) of the CGST Rules, 2017. He further submits that the Petitioner who has taken benefit of the order of this Court on the ground that he will produce all the documents cannot be heard today that although he has not filed all the documents, the present Petition should be entertained and the orders quashed.

5. We have heard learned counsel for the Petitioner and the Respondents. The Order-In-Original whereby the registration of the Petitioner is cancelled, specifically records that the Adjudicating Authority has verified major suppliers and found to be non-existent on physical verification of their principal place of business. Therefore, the Adjudicating Authority has come to a conclusion that the Petitioner has violated the provisions of Section 16 since the ITC benefit is taken without there being any genuine transactions of buying and selling. The Order-In-Original does not refer to any sub-clauses of Section 29(2), but it only refers to Section 29(2) of the CGST Act, 2017 read with Rule 21 of CGST Rules 2017. We, therefore, do not accept the submission of the learned counsel for the Petitioner that only provisions of Section 29(2) (e) are invoked. On a reading of paragraphs 6 and 7 of the Order-In-Original, it is very clear that the provisions of Section 29(2) (a) are invoked read with Rule 21, which deals with fake Input Tax Credit and non-conducting of the business from the address mentioned to the GST Authorities.

6. The Appellate Authority after considering the submissions and the standard operating procedure for adjudicating fake Invoice cases has given a categorical finding in paragraphs 14, 16 and 17, which read as under:

> *"14. The appellant at appeal stage has not submitted any documentary evidence to substantiate their claim i.e. invoices, bank statement, e-way bill etc. Further in the present case the appellant has also failed to follow the conditions of movement of goods. In absence of the same the movement of the goods delivered cannot be ascertained. The appellant has not fulfilled requirement of law. Therefore, revocation of GST number without proper scrutiny like movement of goods is the risk of encashment of ITC availed on fake invoices. Therefore, due diligence for verification of correctness of the ITC availment and utilization is to be done.*
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> *16. To prove the genuineness of their sale and purchase, the appellant should have produced relevant documents pertaining to their business especially with regards to the movement and receipt of goods. In the above case, Hon. Supreme Court has observed that the provisions of Section 70, quoted hereinabove, in its plain terms clearly stipulate that the burden of proving that the ITC claim is correct lies upon the purchasing dealer claiming such ITC. Merely because the dealer claiming such ITC claims that he is a bona fide purchaser is not enough and sufficient. Such a burden of proof cannot get shifted to the revenue. Mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under Section 70 the KVAT Act, 2023.*
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> *17. The appellant during proceedings didn't produce any of the above said documents. Therefore, in view of discussions and findings at above mentioned paras, the appeal filed by the appellant is liable to be rejected."*

7. The Appellate Authority has dismissed the Appeal since the Petitioner could not produce any documentary evidence in support of his submission although he undertook before both the authorities and in the previous round of litigation before this Court to produce all the documents.

8. The Commissioner (Appeal) has followed the decision in the case of ***State of Karnataka vs Ecom Gill Coffee Trading Pvt***

Ltd[1] and the said decision read with Section 155 of the CGST Act requires the Petitioner to discharge the onus of proving the claim which in the instant case, the Petitioner has miserably failed.

9. In our view, no interference is required by this Court since there is no documentary evidence furnished before the authorities in support of the claim that the transactions of purchase and sale are genuine. There are concurrent findings of fact by both the authorities that on physical verification of the supplier, they were found to be non-existence and, therefore, consequently, the ITC claim was bogus. No perversity is brought to our notice in the impugned order.

10. In the light of above, the Petition is dismissed. There will be no order as to costs.

(Jitendra Jain, J) **(M. S. Sonak, J)**

1 2023 (72) G.S.T.L. 134 (S.C), Civil Appeal No. 230 of 2023 with C.A. Nos. 231-232 & 216-217 of 2023, decided on 13.03.2023.