IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-5041-2025(O&M)
Date of decision: 21.02.2025

Anil Kumar (since deceased) through his LRs
… Petitioner

Versus

State of Punjab and others
… Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE DEEPINDER SINGH NALWA

Present: Ms. Sidhi Bansal, Advocate, and
Mr. Viney Kumar, Advocate,
for the petitioner.

Mr. Neha Sonawane, Deputy Advocate General, Punjab.

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ARUN PALLI, J. (Oral)

The petitioner is aggrieved by the impugned show cause notice dated December 19, 2023 (Form GST DRC-01), issued under Section 73 of CGST Act, 2017, by respondent No.2, in relation to the financial year 2018 - 2019, for certain discrepancies were noticed in the return filed by late Anil Kumar, resulting in the imposition of a liability of Rs.9,32,513/-. And also assails the final order dated April 22, 2024 (Form GST DRC-07), passed by respondent No.3, under Section 73(9) of PGST Act, 2017, whereby Rs.9,59,678/- are sought to be recovered from M/s Gauri Shankar Trading Company on account of an excess claim of Input Tax Credit (ITC).

Learned counsel for the petitioner submits that late Anil Kumar happened to be the sole proprietor of M/s Gauri Shankar Trading Company, who unfortunately passed away on May 10, 2020. Therefore, she submits that the impugned show cause notice (P-5), having been issued against the deceased person, and all consequential proceedings, are null and void. Not just that, she submits that upon the demise of Anil Kumar, an application for the cancellation of the GST registration was moved by his heirs on September 28, 2020. And, vide order dated April 15, 2021, the authorities cancelled the registration with effect from June 30, 2020. It is submitted that despite the authorities being aware of the cancellation of the GST registration, recovery proceedings were initiated against a dead person. However, she fairly submits that although recovery against the LRs of the deceased (Anil Kumar) under Section 93(1)(b) of PGST Act, 2017, can be caused, but the petitioner, in the present case, were completely deprived of their right to participate in the impugned proceedings and set out their defence. Even otherwise, it is urged that the impugned demand is time-barred in terms of Section 73(10) of the Act, as an order under Section 73(9) can only be passed within 3 years from the due date for furnishing the annual return for the relevant financial years, which in this case is December 31, 2020.

Notice of motion.

Served with an advance copy of the petition, Ms. Neha Sonawane, learned Deputy Advocate General, Punjab, is present in Court on behalf of the respondent(s). And, on instructions from Mr. Karanbir Singh Mansa, STO, she submits that in the given situation, the impugned show cause notice(s) and the consequential order dated April 22, 2024, being indefensible, it would be expedient if the matter is remitted to the competent authority to pass fresh orders in accordance with law. Accordingly, she submits that the impugned show cause notice(s) and the consequential orders be deemed to have been withdrawn/re-called.

That being so, learned counsel for the petitioner submits that let the petition be disposed of in terms of the statement made by learned Deputy Advocate General, Punjab.

In the wake of the position sketched out above, as also the statements of learned counsel for the parties, the petition is accordingly disposed of. This Court is sanguine that the competent authority shall re-visit the matter in issue in the right earnest, and pass a comprehensive order assigning reasons in support thereof.

However, it is made clear that this order shall not constitute any expression of opinion on the merits of the case of either party, for, as indicated above, the competent authority shall examine the concerns/grievances of the petitioner, strictly in accordance with law.

(Arun Palli)
Judge

(Deepinder Singh Nalwa)
Judge

21.02.2025
Rajan

Whether speaking / reasoned: YES/NO
Whether Reportable: YES/NO