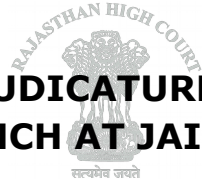




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Civil Writ Petition No. 10609/2024

M/s N.H. Lubricants, J -17 J-18 N. H. Lubricants Riico Industrial Area Sarwar, Ajmer-305403 (Raj.) Through Its Proprietor Kuldeep Singh.

-----Petitioner

Versus

1. State Of Rajasthan, Through Its Additional Chief Secretary, Department Of Finance 1St Floor, Main Building, Gate No. 2, Government Secretariat, Jaipur-302005 (Rajasthan).
2. Assistant Commissioner (State Tax), Ward-I, Kekri Circle-B, Beawar, Near Sadar Police Station, Ajmer Road, Kekri, Beawar.
3. Union Of India, Through Its Secretary, Ministry Of Finance, Government Of India, Jeevan Deep Building Sansad Marg, New Delhi- 110001.

-----Respondents

For Petitioner(s) : Mr. Siddharth Bapna, Advocate
Mr. Mehul Mittal Advocate

For Respondent(s) : Mr. Sandeep Taneja, Additional
Advocate General &
Mr. Naresh Gupta, Advocate

HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Order

25/07/2024

1. Heard.
2. Despite existence of an alternative remedy available to the petitioner, the petitioner has filed this writ petition seeking to invoke extraordinary jurisdiction of this Court on the submission that there is no proper consideration of the reply of the petitioner. Learned counsel for the petitioner would submit that in a case where the Department seeks reversal of input tax credit on the



ground that the supplier has not paid tax, the press release requires the Authorities to first take recourse to the mechanism for recovery from the supplier/seller and it is only when an exceptional circumstance exists where the dealer is missing or there is closer of business by supplier or supplier not having adequate assets etc, the buyer could be proceeded against. He would submit that this issue has already been raised before this Court in **D.B. Civil Writ Petition No. 19636/2023, M/s Apar Fragrances versus Union of India** where the writ petition on this issue has been entertained despite existence of an alternative remedy. Leaned counsel would further submit that this issue has also been dealt with by the Calcutta High Court and orders have been passed, which case has also been referred to by this Court in **M/s Apar Fragrances versus Union of India (Supra)** and petition has been entertained.

3. Per-contra, learned counsel for the respondents would submit that both the aforesaid cases are distinguishable on facts. It is submitted that present is a case where the reversal of input tax credit has taken place under the impugned order on factual premise that the transactions shown are with a bogus/fake firm only to seek input tax credit. Learned counsel for the respondents have taken the Court to the order impugned as also the report of the investigation wing.

4. We find that present is not a case where the Authorities have proceeded on assumption and admission of factual premise that though there exist seller/supplier, input tax credit has been wrongly availed by the buyer or the seller so as to first take action against the supplier/seller before buyer is proceeded against.





5. Without commenting upon the sufficiency of the material on record with regard to the alleged supplier firm being a fake/bogus firm not in existence, suffice it to say that this petition raises a factual dispute and has nothing to do with any jurisdictional issue, much less violation of principles of natural justice. Therefore, this case is distinguishable from the cases, which have been cited at the bar to seek intelligence of this Court.

6. Accordingly, this petition is dismissed with liberty to the petitioner to avail alternative remedy.

7. Considering the submission that the petition was filed before expiry of the period of limitation, it is directed that if the appeal is filed within a period of three months from today, the Appellate Authority shall decide the appeal on its own merit without going into the question of limitation.

(ASHUTOSH KUMAR),J

(MANINDRA MOHAN SHRIVASTAVA),CJ

SANJAY KUMAWAT /TANISHA/6