IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CMPMO No. 273 of 2024
Reserved on: 13.09.2024
Decided on: 17.09.2024

M/s Kundlas Loh Udyog ...Petitioner

Versus

State of H.P. & Anr. ...Respondents

Coram:

Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting?[1] **Yes.**

For the Petitioner : Mr. Shrawan Dogra, Sr. Advocate with Mr. Manik Sethi, Advocate.

For the Respondents: Mr. Anup Rattan, A.G. with Mr. Ramakant Sharma and Ms. Sharmila Patial, Addl. A.Gs. for respondent No. 1.

Mr. Lokender Paul Thakur, Advocate, for respondent No. 2.

Tarlok Singh Chauhan, Judge

The instant petition under Article 227 of the Constitution of India has been filed for grant of the following substantive relief:-

> "(A). A direction be issued under the Supervisory jurisdiction or under the original jurisdiction under the Constitution of India, as pleases to this Hon'ble Court, to allow the present petition of the petitioner by quashing and setting aside the "Blocked Credit Ledger" dated 16.05.2024, popped up on the online portal on 20.05.2024, passed by the respondent No. 2 and also the

[1] Whether reporters of the local papers may be allowed to see the judgment? yes

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summons dated 16.03.2024 issued by the respondent No. 2 as being without jurisdiction and violative of Article 14 of the Constitution of India."

2. It is averred that the petitioner is a manufacturer and distributor of iron and steel in the State of Himachal Pradesh and having GST number as 02AAECH4159EIZZ. Respondent No. 1 is the authorized officer in terms of the enabling provisions of the H.P. Goods & Service Tax Act, 2017/Central Goods & Service Tax Act, 2017 (hereinafter referred to as the "Act").

3. The petitioner had purchased raw material from different sellers and the same had been done after satisfying itself about the genuineness of the suppliers in terms of the conditions as laid down in Section 16 of the Act.

4. On 14.02.2024, the petitioner was issued summons under Section 70 of the HP-GST/CGST Act, 2017 by respondent No. 1 i.e. State of Himachal Pradesh through the Department of State Taxes & Excise and in the said summons the petitioner was asked to supply various documents to show the genuineness of the transactions with the suppliers. Under the said notice, the petitioner was asked to give the details of all the suppliers since September, 2021. The tax period for which the information was sought was between 01.04.2019 to 31.12.2023. It was also mentioned in the said notice that the inquiry would be a judicial inquiry.

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5. Accordingly, the petitioner submitted all the documents as sought for by respondent No. 1, on 12.03.2024.

6. Thereafter, on 16.03.2024, the petitioner was issued summons by respondent No. 2 i.e. Director General of Goods and Service Tax Intelligence, Rohtak, Haryana, regarding supplies made from the five suppliers.

7. According to the petitioner, the proceedings qua the five suppliers had already been initiated by respondent No. 1 in accordance with the summons dated 14.02.2024 and the petitioner accordingly on 20.03.2024 sent an e-mail communication to respondent No. 2 informing that the proceedings qua the named suppliers had already been initiated against the suppliers by respondent No. 1 and the documents qua the same had already been submitted to respondent No. 1.

8. However, respondent No. 2 without following mandatory procedure or affording an opportunity of hearing or any communication, proceeded to block the Input Tax Credit of the petitioner dated 16.05.2024 and the same popped up on the web portal of the petitioner on 20.05.2024 and the petitioner was shocked to see that the Input Tax Credit had been blocked for acts attributable to the suppliers. Aggrieved by the action of respondent No. 2, the petitioner has filed the instant petition.

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9. Respondent No. 1 has filed its reply wherein preliminary submissions regarding the petitioner being estopped by its own acts, deeds, conduct, omission and acquiescence to file the present petition have been raised.

10. On merits, it is contended that the summon notice was issued to the petitioner by respondent No. 1 wherein the factual position regarding the issuance of notice and deposit of documents had not been denied but it is contended that no further proceedings have been initiated by the replying respondent and the case is still under consideration.

11. Respondent No. 2 has filed its independent reply wherein preliminary submissions regarding *locus standi*, cause of action, maintainability, no error of jurisdiction etc. have been raised. It is further averred that the petitioner has not approached the Court with clean hands and the petition deserves to be dismissed on the principle of *suppressio veri suggestio falsi*.

12. Respondent No. 2 has thereafter sought to justify its action of issuance of notice to the petitioner based upon the intelligence received in its office. However, since this Court is not going into the merits of the cause, the averments made in the reply need not to be referred to.

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13. It is further contended that it was after finding a *prima facie* case regarding the petitioner being involved in availing ineligible Tax Input Credit on the strength of fake invoices for dummy entities to the tune of Rs. 1,02,16,185/-. The Tax Input Credit availed by the petitioner in its ITC Ledger was blocked in terms of Rule 86 of CGST Rules, 2017. Further, the Input Tax Credit has been blocked not with the intention to hamper the business of the petitioner but to safeguard the interest of the government revenue as envisaged in Rule 86A of the CGST Rules, 2017.

14. It is then averred that respondent No. 1 had not passed the impugned order in violation of the principle of natural justice, rather the principle of natural justice was followed as summons dated 16.03.2024 were issued to the petitioner in order to provide an opportunity of being heard and opportunity was also provided to the petitioner to respond and substantiate the veracity of Input Tax Credit availed before the passing of the order dated 16.05.2024 to block Input Tax Credit under Rule 86A of the CGST Rules, 2017. The replying respondent passed an order on the basis of facts and circumstances and information available on record. Thereafter, the respondent has referred to Rule 86A of the CGST Rules, 2017 to justify its action.

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15. On merits, the averments made in the preliminary submissions have been reiterated and reproduced.

16. The petitioner has filed rejoinder to the reply of respondent No. 1 wherein the averments made in the petition have been reiterated and furthermore reliance has been placed on the judgment of learned Division Bench of Gauhati High Court in **WP(C) No. 2863 of 2022**, titled as **National Plasto Moulding vs. State of Assam & Anr., decided on 05.08.2024,** to contend that it is for respondent No. 1 to further investigate in the matter strictly in accordance with law and that the acts of the supplier cannot be burdened on the petitioner unless it is established that the purchase transactions are not bonafides as held by the Gauhati High Court.

17. A separate rejoinder has been filed to the reply filed by respondent No. 2 wherein again the averments made in the petition have been reiterated and in addition thereto again reliance has been placed on the **Gauhati High Court's judgment (supra)**.

I have heard learned Counsel for the parties and have gone through the material placed on record.

18. Section 6 of the CGST Rules, 2017 reads as under:-

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“Section 6 - Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances

(1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification3, specify.

(2) Subject to the conditions specified in the notification issued under sub-section (1),—

(a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.”

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19. It is clear from the perusal of the Section 6(1) that it contains a *non obstante clause* and also empowers officers appointed under the State Goods and Services Tax Act, 2017 (hereinafter referred to as the 'SGST Act') or the Union Territory Goods and Services Tax Act, 2017 (hereinafter referred to as the 'UGST Act') to be appointed as a proper officer for the purpose of this Act.

20. Clause (a) of sub section 2 of Section 6 of the Act expressly provides that if a proper officer issues an order under the Act, he shall also issue an order under the SGST or the UGST Act as authorised by the said enactment under intimation of the jurisdictional Officer.

21. In conformity with the scheme of statutes in respect of Goods and Services Tax Act (the Act, the SGST Act and the UGST Act) officers under any of the said statutes can be authorized as proper officers for the purposes of proceeding under the other GST statutes as well. Section 6(1) of the Act empowers the officers appointed under the SGST Act and the UGST Act to act as proper officers for the purposes of the Act. Section 6 of the SGST Act and the UGST Act mirrors Section 6 of the Act. Consequently, the officers under the said enactments are also authorized as proper officers under the Act.

22. Further in conformity with the scheme of cross empowering officers under the said enactments, Clause (a) of Section 6(2) of the Act also empowers a proper officer to issue orders under the SGST Act and the said Act. Similarly, officers under the SGST Act and the UGST Act are also empowered to issue orders under the Act. The only condition is that the issuance of such orders is required to be intimated to the Jurisdictional Officer of the central tax or the state tax, as the case may be.

23. To ensure that there are no multiple proceedings in regard of the central and the state officers being authorized as proper officers, Clause (b) of Section 6(2) of the Act provides that where a proper officer under the SGST Act and the UGST Act has initiated proceedings on a subject matter, the proper officer under the Act would not initiate proceedings "on the same subject matter". This provision of CGST is also mirrored by Clause (b) of Section 6(2) of the SGST Act and UGST Act as well. Thus, where a proper officer under the CGST Act had initiated proceedings on a subject matter, no proceedings would be initiated by proper officer authorized under the SGST Act or UGST Act on the same subject matter.

24. It is clear that the object of Section 6(2)(b) of the Act is to ensure that cross empowerment of officers of Central Tax

and State Tax do not result in the taxpayers being subjected to parallel proceedings.

25. Noticeably, Section 6 (2) (b) of the Act treats the empowered officers under the SGTS/UGST Act at the central level to be at par and does not prescribe for transfer of investigation of the proceedings from State authority to the Central authority or vice-versa.

26. The object of Section 6(2)(b) of the Act is to avoid multiple proceedings by the Sales Tax Officer and Central Tax Officer on the same subject matter and the Rules of purposive interpretation requires Section 6(2)(b) of the Act to be read in light of this object.

27. This would further be clear from the Circular issued by the Ministry of Finance/ Department of Revenue, dated 05.10.2018, which reads thus:-

> "It has been brought to the notice of the Board that there is ambiguity regarding initiation of enforcement action by the Central tax officers in case of taxpayer assigned to the State tax authority and vice versa.
>
> 2 In this regard. GST Council in its 9th meeting held on 16.01.2017 had discussed and made recommendations regarding administrative division of taxpayers and concomitant issues. The recommendation in relation to cross-empowerment of both tax authorities for enforcement of intelligence based action is recorded at para 28 of Agenda note no. 3 in the minutes of the meeting which reads as follows:-

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> "viii. Both the Central and State tax administrations shall have the power to take intelligence- based enforcement action in respect of the entire value chain"
>
> 3. It is accordingly clarified that the officers of both Central tax and State tax are authorized to initiate Intelligence based enforcement action on the entire taxpayer's" base irrespective of the administrative assignment of the taxpayer to any authority. The authority which initiates such action is empowered to complete the entire process of investigation, issuance of SCN, adjudication, recovery, filing of appeal etc. arising out of such action,
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> 4. In other words, if an officer of the Central tax authority initiates intelligence based enforcement action against a taxpayer administratively assigned to State tax authority, the officers of Central tax authority would not transfer the said case to its State tax counterpart and would themselves take the case to its logical conclusions.
>
> 5. Similar position would remain in case of Intelligence based enforcement action Initiated by officers of State tax authorities against a taxpayer administratively assigned to the Central tax authority.
>
> 6. It is also informed that GSTN is already making changes in the IT system in this regard."

28. It would be evident from the aforesaid Circular that central government itself has acknowledged that once the officer of the State authority has initiated action, it would be the proper officer who would then conduct further proceedings under the Act. The import of the aforesaid Circular dated 5.10.2018 is to be

understood to mean that when an inquiry is conducted by a proper officer of the State, an investigation is required to be done by the Central Tax Officer, the Central Tax Officer would exercise the said power for the purpose of investigation. However, it would not mean that the proceedings being conducted by the State Tax Officer would also be transferred to the Central Tax Officer and the proceedings as initiated earlier point of time would rather continue with that authority that initially commence the proceedings.

29. This would also be evidently clear from the internal communication bearing F. No. CBEC-20/10/07/2019-20/10/ 07/2019 - GST GST by the GST Wing, dated 22.06.2020, which reads as under:-

> "2. Issue raised in the reference is whether intelligence based enforcement actions initiated by the Central Tax officers against those taxpayers which are assigned to the State Tax administration gets covered under section 6(1) of the CGST Act and the corresponding responding provisions of the SGST/UTGST Acts or whether a specific notification is required to be issued for cross empowerment on the same lines as notification No. 39/2017 39/2017-CT CT dated 13.10.2017 authorizing the State Officers for the purpose or refunds under section 54 and 55 of the CGST Act.
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> 3.1 The issue has been examined in the light of relevant legal provisions under the CGST Act, 2017.

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It is observed that Section 6 of the CGST Act provides for cross empowerment of State Tax officers and Central Tax officers officers and reads as:

> "6. (1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, Subject to such conditions as the Government shall, on the recommendations of the Council, by Notification specify.

3.2. Thus in terms of sub-section section (1) of section 6 of the CGST Act and subsection (1) of section 6 of the respective State GST Acts respective State Tax officers and the Central Tax officers respectively are authorised to be the proper officers for the purposes of respective Acts and no separate notification is required for exercising the said powers in this case by the Central Tax Officers under the provisions of the State GST Act. It is noteworthy in this context that the registered person in GST are registered under both the CGST Act and the respective SGST/UTGST Act.

3.3 The confusion seems to be arising from the fact that, the said sub--section section provides for notification by the Government if such cross empowerment is to be subjected to conditions. It means that notification would be required only if any conditions are to be imposed. For example, Notification No. 39/2017 39/2017-CT CT dated 13.10.2017 restricts powers of the State Tax officers

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> for the purposes of refund and they have been specified as the proper officers only under section 54 and 55 of the CGST Act and not under rule 96 of the CGST Rules, 2017 (IGST Refund on exports). If no notification is issued to impose any condition, it means that the officers of State and Centre have been appointed as proper officer for all the purpose of the CGST Act and SGST Acts.
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> 4. Further, it may kindly be noted that a notification under section 6(1) of the CGST Act would be part of subordinate legislation which instead of empowering the officer under the Act, can only be used to impose conditions on the powers given to the officers by the section. In the absence or any such conditions, the power of Cross- empowerment under section 6(1) of the CGST Act is absolute and not conditional."

30. Thus, it would be evidently clear from the aforesaid circular(s) that the State and Central Governments have been extended the same powers under the CGST and SGST Act and if one of the officers has already initiated proceedings, the same cannot be transferred to another and he alone is to issue process under the Act and take it to its logical end.

31. In the instant case, the State authorities have already issued notice to the petitioner’s company to initiate proceedings against the petitioner and called upon to produce the following record pertaining to the five firms for which the notice has been issued by the respondent No. 2:-

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> 1. Supplier-wise detail of inward supplies (including original invoices and GSTR-2. GSTR-2A, if any) received by you intended for supply to all taxable persons during the above mentioned period Annexure attached
> 2. Proof of supply of goods as per section 16(2)(b) of the Act ibid Suppliers during the above mentioned period
> 3. Bank Account Statement during the above mentioned period of proof of payment made for the inward suppliers
> 4. Detail of vehicle involved in delivery of goods (with GR's, e-way bill and Toll receipts) payment proof of freight charges and Gate Entry detail of vehicle into your business premises during the above mentioned period.

32. It would be an entirely different matter that if there would have been another firm which has also been found to be availing fraudulent ITC, then the central government authorities would not be precluded from taking action against that firm. The independent action against some other firms would not impede the proceedings already initiated by the State Tax Authorities. Any new information which the respondent No. 2 may have gathered related to fraudulent availment or passing on can always be informed to the authorities, who already conducting the investigation, inquiry and proceedings under Section 6(2) of the Act.

33. In my considered opinion, the word “subject-matter” used in Section 6(2)(b) of the Act would mean, “the nature of proceedings”. In the present case, it would thus mean the proceedings initiated prior at any point of time vide Annexure P-1

by respondent No. 1 and, therefore, for the same subject matter, respondent No. 2 cannot be allowed to initiate proceedings. Such action, if allowed, would be contrary to the provisions contained in Section 6(2)(b) of the Act.

34. In view of the aforesaid discussions and for the reasons stated above, I find merit in this petition and the same is accordingly allowed and the Blocked Credit Ledger dated 16.05.2024, popped up on the online web portal on 20.05.2024, passed by respondent No. 2 and the summons dated 16.03.2024 issued by respondent No. 2, are accordingly quashed and set aside. Pending applications, if any, also stand disposed of.

(Tarlok Singh Chauhan)
Judge

17th September, 2024
(sanjeev)