

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 23062 of 2024 (O&M)

Reserved on : 11.09.2024

Date of Pronouncement : 20.09.2024

M/s Ethos Limited

...Petitioner

Versus

The Additional Commissioner, CGST Audit and another ...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH**

Present: Mr. Sujit Gosh, Senior Advocate assisted by
Mr. Abhinav Sood, Ms. Mannat Waraich,
Ms. Anishka Aggarwal, Ms. Anmol Gupta,
Mr. Sayyam Garg, and Mr. Jaywardhan, Advocates,
for the petitioner.

SANJEEV PRAKASH SHARMA, J.

The present writ petition preferred by the petitioner assails the show cause notice dated 03.08.2024 issued to the petitioner under Section 74 of the Central Goods and Services Tax Act, 2017 (hereinafter to be referred as 'the CGST Act').

2. Learned counsel for the petitioner submitted that the tenor of the show cause notice itself reflects that the respondents have already taken a decision and virtually held the petitioner to be guilty of having evaded payment of tax, and therefore, the respondents have also proposed to impose penalty under Section 74 of the CGST Act and application of interest under Section 50 of the CGST Act.

3. Learned counsel for the petitioner has taken us to the various aspects of the show cause notice and strenuously argued that the officer has proceeded to decide on facts and has reached to conclusion by assuming factual supply of goods and non-payment of tax.

4. Learned counsel for the petitioner further submitted that the show cause notice demands non-payment of tax in relation to supply of goods which have never been supplied in the State of Punjab and relates to goods of another States. It is submitted that the authority has closed itself with jurisdiction which was not available to it and submits that this Court would examine the show cause notice at this stage as the authority cannot be said to be having any jurisdiction. It is stated that the supply has taken place not only in U. T. Chandigarh but also other registrations of the petitioner such as Assam, New Delhi, Gujarat, Haryana, Karnataka, Madhya Pradesh, Maharashtra, Punjab, Rajasthan, Tamil Nadu, Telengana, Uttar Pradesh and West Bengal and the petitioner has duly discharged tax therein. However, the respondents have erroneously assumed jurisdiction and proceeded to raise the demand and also hold that there has been an attempt on the part of the petitioner by fraud to avail the benefit of ITC.

5. It is further submitted that as per Section 22(1) of the CGST Act, the supplier is required to obtain registration in the State where he makes a taxable supply and Article 246A of the Constitution of India read with Section 9 of the CGST Act provides for levy of GST on intra-State supply of goods or services or both on the value determined under Section 15 of the CGST Act and at such rates as may be notified by the Government on the recommendations of the GST Council. Such tax is to be calculated in such a manner as may be prescribed and would be payable by the taxable person.

6. It is his submission that as per the audit memo dated 26.07.2024, the amounts have been indicated under three different heads, namely, customer belongs to Chandigarh and redeemed in other States,

Customer belongs to other States and redeemed in other States and Customer belongs to other States and redeemed in Chandigarh. However, the entire demand has been raised on the petitioner at Chandigarh location irrespective of the place where the vouchers have been issued or utilized. He, therefore, submits that the show cause notice has been issued by committing jurisdictional error.

7. We have carefully noticed the submissions.

8. We find that the petitioner has not submitted any reply to the notice issued under Section 74 of the CGST Act which is a show cause notice. The petitioner has directly approached this Court challenging the said show cause notice on the ground of jurisdiction. We also noticed that the show cause notice has emanated on the basis of GST audit report after the record for the period 2017-18, 2018-19, 2019-20 was examined by the internal Audit Team of Circle-1, Audit Commissionerate CGST, Chandigarh in terms of Section 65 of the CGST Act.

9. The petitioner's objection that the officer having no jurisdiction to issue notice to it on the assumption of having its business in other States is noticed and to be rejected as misconceived. There is no jurisdictional error on the part of the respondents in issuing show cause notice under Section 74 of the CGST Act.

Sections 4, 5 and 6(2)(b) of the Central Goods and Services Tax Act, 2016 provides as under:-

“4. Appointment of Officers.

(1) The Board may, in addition to the officers as may be notified by the Government under section 3, appoint such persons as it may think fit to be the officers under this Act.

(2) Without prejudice to the provisions of sub-section (1), the Board may, by order, authorise any officer referred to in clauses (a) to (h) of section 3 to appoint officers of central tax below the rank of Assistant Commissioner of central tax for the administration of this Act.

5. Powers of officers

(1) Subject to such conditions and limitations as the Board may impose, an officer of central tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of central tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of central tax who is subordinate to him.

(3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him.

(4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of central tax.

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 notification, 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 and order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorized 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.”*

Thus, the powers of the officers who have been appointed under Sections 4, 5 of the CGST Act and those appointed under Section 6 of the CGST Act are the same. A person is appointed by the State is authorized to be a proper officer for the purpose of this Act.

Section 74(1) of the CGST Act provides for initiating proceedings by a proper officer where it appears to him that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or for the purposes, as mentioned therein, such proper officer is authorized to issue the notice and proceed.

As per Section 6(2)(b) of the CGST Act once he issues such notice, no proceedings shall be initiated by any other proper officer on the same subject matter.

From above, it is apparent that once notice has been issued to the petitioner under Section 74(1) of the CGST Act by the State GST Officer of Punjab, no other officer from any other State would be authorized to initiate proceedings and the question regarding evading of tax or availing of

wrongful input tax credit or other issues in terms of Section 74 will be examined by the same officer alone.

11. This Court on the question of proper officer in the case of CWP No. 1661 of 2022 *M/s Stalwart Alloys India Private Limited vs Union of India and others* decided on 28.08.2024 held as under:

“29. In the opinion of this Court, the word ‘subject matter’ used in Section 6(2)(b) of the Act would mean ‘the nature of proceedings’. In the present case, thus, it would mean the proceedings initiated for wrongful availment of input tax credit by fraudulent means. Thus, if the State has already initiated proceedings by issuing notice under Section 74 of the Act for the period upto 22.07.2019, for the same subject matter, the DGGI cannot be allowed to initiate proceedings for the availment of input tax credit by fraudulent means for the period from 28.07.2019 to 20.01.2022. Such action, if allowed, would be contrary to the provisions contained in Section 6 (2)(b) of the Act.

30. It is to be noticed that earlier this Court had already directed the respondents to conduct the proceedings at one place alone. Since the proceedings have already been initiated by the State authorities i.e. the Excise and Taxation Officer at Shahbad. The summons and warrants have already been issued and the entire record is available with them. As has come on record, there is no occasion to uphold the action of the DGGI or the action of the State Tax Officer in transferring the proceedings pertaining to the petitioner firm which were pending before it by his letter dated 15.03.2022. We, accordingly, quash the same and direct the State Tax Officer under the GST Act to proceed and conclude the proceedings in terms of the provisions of the Act.”

In view of the above, we hold that the authority at Chandigarh would have the power to issue notice under Section 74 of the CGST Act

even with regard to dealings of the company in other States, and therefore, there is no jurisdiction error.

12. We have not given any findings relating to the challenge made by the petitioner regarding the contents of the notice under Section 74 of the CGST Act and we have leave it open to the petitioner to take up all arguments and objections in its reply. The authority would consider the reply of the petitioner and is expected to pass a speaking. If the petitioner is still aggrieved of the order, after the reply is received, he would be free to avail remedies before the appropriate forum as per the provisions of the Act.

13. In view of the above, the present writ petition is dismissed summarily.

14. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

20.09.2024

vs

(SANJAY VASHISHT)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No