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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 06.07.2022

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W.P.(C) 9629/2022 & CM No.28733/2022

ABHISHEK GUMBER, PROPRIETOR

OF M/S AG ENTERPRISES

..... Petitioner

Through: Mr Chinmaya Seth, Advocate.

versus

COMMISSIONER OF GST, NEW DELHI

..... Respondent

Through: Mr Anuj Aggarwal, ASC with Ms
Ayushi Bansal and Mr Sanyam Suri,
Advocates.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

ORDER

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06.07.2022

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. The substantive prayers that have been sought by the petitioner in the instant writ petition are extracted below:

“(i) Issue a writ or order in the nature of certiorari or any other writ thereby setting aside Demand Notice dated 14.06.2022 [Form GST DRC – 01A] – Reference Number: ZD070622007441U, (“impugned Demand Notice”) issued by the Respondent, wherein demand has been raised on Petitioner to deposit tax amounting to Rs. 12,56,640.00/- along with interest amounting of Rs. 4,52,390/- and penalty amounting to Rs. 12,56,640/- thereby totally amounting to Rs. 29,65,670/-, issued by Sh. Pritam Singh, Sales Tax Officer Class II, AVATO, Ward No.80, Delhi State, Government of National Capital Territory of Delhi, Department of Trade and Taxes, Vyapar Bhawan, IP Estate, New Delhi – 110002; and/or

(ii) Grant costs to the Petition in favour of the Petitioner”

1.1. Mr Chinmaya Seth, who appears on behalf of the petitioner, says that



he does not wish to press the second prayer, which concerns costs.

1.2. The statement of Mr Seth is taken on record.

2. The principal plea of the petitioner is that a show-cause notice (SCN) issued earlier i.e., SCN dated 08.02.2021, has already been adjudicated by the concerned authority, *via* the order dated 12.05.2022.

2.1. Concededly, *via* the aforementioned adjudication order, the refund claim lodged by the petitioner was rejected.

2.2. We may note that the petitioner had sought a refund of Rs. 12,71,426/-.

3. According to Mr Seth, the adjudicating authority concluded that the refund was founded on forged input tax credit [in short 'ITC'] claim and the same had to be rejected.

3.1. As noted above, the order dated 12.05.2022 was predicated on the SCN dated 08.02.2021, which adverted to Section 73/74 of the Central Goods and Service Tax Act 2017 [in short "Act"] and Rule 92(3) of CGST Rules 2017 [in short "Rules".]

3.2. Mr Seth informs us that an appeal has been lodged against the adjudication order. We are told that the said appeal was lodged on 26.05.2022.

4. Ms Ayushi Bansal, who appears on behalf of the respondent, affirms the aforesaid position i.e., the fact that the adjudication order has been passed and an appeal has been lodged by the petitioner before the concerned appellate authority.

4.1. Ms Bansal says that impugned demand notice dated 14.06.2022 has been issued to protect the interests of the respondent i.e., the revenue.

4.2. To be noted, the impugned demand notice dated 14.06.2022 refers to the provisions of Section 73(5) of the Act and Rule 142(1A) of the Rules.



4.3. Ms Bansal, though, in support of her plea, has drawn our attention to Section 75 of the Act. It is contended by Ms Bansal that the impugned demand notice has been issued in consonance with the provisions of sub-section (4) of Section 75 of the Act.

5. We have heard the learned counsel for the parties in the matter for some time.

5.1. The record shows that the matter was listed before the Court for the first time on 29.06.2022. On the said date, the Court had issued notice in the instant writ petition. The coordinate bench, *via* the very same order, placed the matter before the roster Bench (which is the instant bench) today i.e., on 06.07.2022.

6. Although, counter-affidavit has not been filed in the matter, the stand of the respondent/revenue has been articulated, as recorded hereinabove, by Ms Bansal.

7. It is clear that once the petitioner's refund claim was rejected on the ground that it was founded on forged ITC, the petitioner would be liable to pay tax, interest and perhaps also penalty, in the event the adjudication order is sustained.

7.1. The fact that an appeal has been preferred by the petitioner, which is pending adjudication, persuades us to hold that, at this stage, the impugned show-cause notice is premature.

7.2. In the event the appeal were to be dismissed, it would then be open to the respondent/revenue to take recourse to Section 75 of the Act and the attendant rules framed thereunder.

8. Therefore, the impugned demand notice dated 14.06.2022 is set aside, with liberty to the respondent to trigger the process under Section 75 of the Act and the attendant rules, once clarity is attained with regard to the



outcome of the pending appeal lodged by the petitioner.

9. The writ petition is disposed of, in the aforesaid terms.
10. Consequently, the pending application shall stand closed.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

JULY 6, 2022/ tr

[Click here to check corrigendum, if any](#)

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