Trimurti Fragrances And Flavours Pvt. Ltd. And 6 Others v. Director General Of Goods And Services Tax 2 Others

WRIT TAX No. 1290 of 2023 | Decision: 2023-11-08 | Allahabad High Court

Neutral Citation No. - 2023:AHC:217284-DB

Chief Justice's Court Case :- WRIT TAX No. - 1290 of 2023

Petitioner :- Trimurti Fragrances And Flavours Pvt. Ltd. And 6 Others Respondent :- Director General Of Goods And Services Tax 2 Others Counsel for Petitioner :- Harish Kumar Shukla Counsel for Respondent :- Krishna Agarawal,Parv Agarwal

Hon'ble Pritinker Diwaker,Chief Justice Hon'ble Ashutosh Srivastava,J.

1. Heard Shri Vishwajeet Singh, learned Senior advocate, assisted by Sri Harish Kumar Shukla, learned counsel for the petitioners Sri Krishna Agarwal and Sri Parv Agarwal, learned counsels for the respondents.

2. The challenge in this writ petition is to the Demand-cum-Show Cause Notice dated 07.06.2023 bearing No. DGGI/AZU/Gr-C/36-12/2023-24 and file No. DGGI/AZU/Gr-C/12(4) 05/2023-24 issued by the respondent No. 1 and 2 purportedly for alleged violation of the provisions of CGST Act, UPGST Act read with IGST Act further read with GST (Compensation to States) Act, 2017 whereby and whereunder the petitioner has been asked to show cause as to why:

(i) the amount of Rs. 61,99,01,263/- should not be considered as assessable value of 137,75,58,363 number of pouches of SS-1 brand secented tobacco/zarda and HP-5 brand zarda, having RST Rs. 1/- per pouch, manufactured and removed/cleared clandestinely without payment of Basic Central Excise duty and NCCD during the period from September-2020 to December 2021;

(ii) Total 137,75,58,363 number of pouches of SS-1 brand tobacco/zarda and HP-5 brand zarda having assessable value of Rs. 61,99,01,263 manufactured and removed/cleared clandestinely without payment to Central Excise duty and NCCD during the period from September 2020 to December 2021 should not be held liable for confiscation under Rule 28 (1) of the Central Excise Rules 2017, read with relevant provisions under Central Excise Act, 1994;

(iii) Basic Central Excise Duty of Rs. 30,99,506 and NCCD of Rs. 15,49,75,316 (total Rs. 15,80,74,822/-) evaded by the petitioner on accounht of illicit supplies/clearance of scented tobacco/zarda without payment of applicable Central Ecise Duty and NCCD during the period of September 2020 to September 2021 should not be demanded and recovered from the petitioner under Section 11A (4) of the Central Excise Act, 1994, read with Section 136 of the Finance Act, 2001 along with

interest at applicable rates under Section 11AA of the Central Ecise Act 1994 read with Section 136 of the Finance Act, 2001;

(iv) Amount of Basic Central Excise Duty (BED) of Rs. 10,05,000/- voluntarily paid by M/s TFFPL, Kanpur towards Central Excise Duty (BED) should not be appropriated towards the total Central Excise Duty (BED) liability, payable by the petitioners;

(v) Amount of National Calamity Contingent Duty (NCCD) of Rs. 5,01,15,000/- voluntarily paid by the petitioners should not be appropriated towards the total liablity of National Calamity Contingent Duty (NCCD) (as a surcharge of Central Excise Duty) payable by the petitioner;

(vi) Penalty equvalent to the Central Excise Duty including NCCD evaded as specified in the impugned notice should not be imposed upon the petitioners under Section 11AC(c) read with Section 11A (4) of the Central Excise Act, 1994 read with Rule 28 (1) (a), Rule 28 (1) (b) and Rule 28 (1) (c) of the Central Excise Rules, 2017 read with Section 136 of the Finacne Act, 2001 for commission of offences specified under Section 9AA read with Section 9 (1) (b), Section 9 (1) (bb) and Section 9 (1)(bbb) of the Central Excise Act, 1944 read with Rule 28 (1) of the Central Excise Rules 2017.

3. Learned counsel for the petitioners has assailed the impugned Show Cause Notice on the ground that Notice has been issued with oblique motive, is based on incorrect facts, contains numerous inaccuracies and is liable to be interfered with by this Court. It is alleged in the Show Cause Notice that 4 Trucks were intercepted by the Respondent no. 1 on 22.12.2021 near Bakarganj Chauraha, Kanpur i.e. a place outside the premises of the petitioner No. 1 located at 133/232, Transport Nagar, Kanpur Nagar, Kanpur which was allegedly carrying Shikhar Brand Pan Masala and SS-1 brand scented tobacco without any invoice/E-Way Bill, whereas the correct facts are that altogether 4 Trucks were being loaded with the above goods outside the factory of the petitioner No. 1 and the loading of 3 Trucks was complete and 4th Truck was being loaded. The loading of Pan Masala in the 4th Truck was complete and scented tobacco/zarda was yet to be loaded when the officials of the respondent no. 1 physically verified the goods. The documents pertaining to the transport of the said goods were to be prepared only after completion of the loading. At the time of physical verification one invoice and E-Way Bill had already been prepared and other 3 invoices and E-Way Bills were under preparation. The allegation that the Trucks were intercepted is patently false as the Trucks were standing at the factory gate and material was being loaded. It is also asserted that after physical verification of the Trucks, the applicable GST was paid in respect to the materials loaded in the 4 trucks. It is further submitted that the impugned notice is based on presumptions and assumptions without corroborating evidence and has been issued with a premeditated mind. The notice does not satisfy

the criteria for ascertainment of duty envisaged under Section 74 of the CGST Act, 2017 and as such is bad in law. The notice is also vague inasmuch as on one hand it alleges that the invoices are fake and on the other hand it has been asserted that the value in the invoices have been kept low with intent to evade duty/taxes. It is accordingly, prayed that the impugned notice be set aside and the proceedings be quashed. It is also submitted that the petitioner has voluntarily deposited a sum of Rs. 50 Crores in response to the Show Cause notice. Reliance is placed upon a decision of a coordinate Bench of this Court in Bharat Mint and allied Chemicals vs. Commissioner Commercial Tax and 2 others (2022 Law Suit (All) 228.

4. Per contra, the writ petition has been opposed by learned Counsels for the contesting respondents by submitting that the writ petition has been filed against a Show Cause Notice and the Competent Authority after due investigation, scrutiny of Invoices, and consignment notes, verification of the date available on the GSTN Portal regarding the registration of the Firms dealing with the petitioner having found to be fake/ non-existent has found that it is a fit case to issue the impugned notice. He submits that the consideration at the stage of the Show Cause Notice is limited to ascertainment of information that the assessee has evaded tax liability. Final determination is to be made after considering the reply of the assessee. It is also argued that the petitioner is at liberty to raise all factual issues/objections at the appropriate stage. It is thus submitted that no interference is warranted by this Court under Article 226 of the Constitution of India.

5. We have heard learned counsels for the petitioner as also the learned counsels for the respondents and have perused the record.

6. Having heard learned counsel for the parties and having perused the records particularly to the contents of the Show Cause Notice impugned, prima-facie we find that the allegations leveled against the petitioners have substance. We, however are not inclined to venture into the correctness or otherwise of the allegations set out in the impugned Show Cause Notice as the same would involve fact appreciation and with respect to the same the petitioners have adequate statutory remedies available by filing appropriate objections to the Show Cause Notice and lead defence evidence controverting the allegations. Suffice is to note that there is no inherent lack of jurisdiction of the Competent Authority to issue the impugned Show Cause Notice. The argument raised by learned counsel for the petitioner that the Show Cause Notice has been issued with a premeditated mind does not merit consideration at this stage of the proceedings. We are of the view that once allegations of infraction of law arise the adjudication proceedings may not be interjected in exercise of extra ordinary jurisdiction conferred under Article 226 of the Constitution of India particularly in view of the fact that reference made to other facts narrated in the Show Cause Notice would also remain to be examined in the adjudication proceedings.

7. Accordingly, interference claimed is declined in the face of alternative statutory remedy available to the petitioner of filing objections/ reply to the Show Cause

Notice. The case Law relied upon in our opinion has no application to the facts of the present case.

8. In view of the above the writ petition is dismissed leaving it open for the petitioners to take recourse to the remedies available to them under the law. It is however, made clear that we have not adjudicated the facts and no observation made in this order may prejudice the defence that may be set up by the petitioner in the pending adjudication.

Order Date :- 8.11.2023 Deepak/

(Ashutosh Srivastava,J.) (Pritinker Diwaker,CJ.)

2023-11-16T16:38:39+0530 High Court of Judicature at Allahabad