

(2023) 03 DEL CK 0161

In the Delhi High Court

Case No : Civil Writ Petition No. 258 Of 2023

Ajay Kumar Jindal Prop. Of M/S A.S. Fastener

APPELLANT

Vs

Superintendent, Ward 71, Central Goods And Services Tax,
Delhi & Ors.

RESPONDENT

Date of Decision : 23-03-2023

Acts Referred:

Central Goods and Services Tax Act, 2017 — Section 29(2), 54

Citation : (2023) 03 DEL CK 0161

Hon'ble Judges : Vibhu Bakhru, J; Amit Mahajan, J

Bench : Division Bench

Advocate : Puneet Rai, Nikhil Jain, Anurag Ojha, Gautam Barnwal, Kumar Abhishek

Final Decision : Disposed Of

Judgement

Vibhu Bakhru, J

1. The petitioner has filed the present petition impugning an order dated 31.10.2022 passed by respondent no.3 [the Joint Commissioner, Central Goods and Service Tax (CGST), Appeals-I, Delhi – hereafter 'the Appellate Authority'], whereby the petitioner's appeal against an order dated 22.02.2022 passed by respondent no.2 [the Deputy Commissioner, Ward 71, CGST Delhi – hereafter 'the Adjudicating Authority'], was rejected.

2. By the order dated 22.02.2022, respondent no.2 had rejected, the petitioner's application seeking restoration of his Goods and Service Tax (GST) registration, which was canceled ab-initio.

3. The petitioner also impugns an order dated 09.03.2022 passed by respondent no.2, rejecting the petitioner's claim for input tax credit (hereafter 'ITC') of Rs. 24,91,347/- (Twenty Four Lakh Ninety One Thousand Three Hundred And Forty Seven Rupees). The petitioner's claim for refund of ITC was rejected because the petitioner was found to be non-existent and non-functional at the registered

place of business. The said order is also inextricably linked with the cancellation of the petitioner's GST registration.

4. The petitioner is, essentially, aggrieved by the denial of ITC refund consequent to the cancellation of its GST registration.

Brief Facts

5. The petitioner is, inter alia, engaged in the business of manufacturing and supply of zipper fasteners, zipper sliders and other related products. The petitioner carries on his business under the name and style of his sole proprietorship concern named M/s A. S. Fastener. The said concern, with its principal place of business at Khasra No.80, Gali No.4, Samaypur Village, North West Delhi, Delhi, 110042, was registered under the Central Goods and Services Tax Act, 2017 (hereafter 'the Act') with effect from 02.07.2017 (bearing GST Registration No.07AGCPJ2410P2ZG).

6. The petitioner regularly filed its GST returns and also paid the taxes as due. The petitioner has filed the statement of taxes paid during the period 01.07.2017 to 31.03.2022 and the said statement is not disputed by the respondent.

7. The petitioner claims that it formed a partnership with one Mr. Tarun Goyal on 31.07.2021, and commenced the same business in the name of M/s A. S. Fastener in Haryana with effect from the said date, that is 31.07.2021.

8. The said firm (M/s A. S. Fastener) was also registered with the GST authorities under the GST Registration No. 06ABVFA5901G1ZD with its principal place of business at Plot No.571, Phase II, HHSI IDC, Barhi, Ganaur, Sonipat, Haryana, 131101.

9. The petitioner applied for refund of the amount lying in his Electronic Cash Ledger (ECL) on 27.09.2021, which was allowed by an order dated 25.11.2021. Thereafter, on 12.11.2021, the petitioner filed an application for refund of the accumulated ITC of Rs. 24,91,347/- (₹3,07,643 as Central Tax and Rs. 21,83,704 as State Tax) for the period April, 2020 to March, 2021. The petitioner claims that the said ITC was accumulated due to inverted tax structure and was liable to be refunded.

10. The respondent states that one of the GST officials visited the erstwhile premises of the petitioner at Khasra No.80, Gali No.4, Samaypur Village, North West Delhi, Delhi, 110042 on 03.01.2022 without any intimation to the petitioner. Admittedly, the petitioner had ceased its business from the said premises prior to 03.01.2022.

11. On 04.01.2022, respondent no.2 issued a show-cause notice calling upon the petitioner to show cause why its application for refund of ITC of Rs. 24,91,347/- not be rejected. The show-cause notice flagged seven issues. The first related to the mismatch of payment of taxes. The show-cause notice mentioned that the tax liability, as declared in the GSTR-1 did not match with the payment of tax in

GSTR-3B. The concerned authority found that there was a difference of Rs. 14,916/- between the tax liability as declared in GSTR-1 and as paid under GSTR-3B. The second issue related to the difference of ITC between Annexure-B and GSTR-3B. Respondent no. 2 had noticed that there was a difference of Rs. 40,915/- between Annexure-B and GSTR-3B. The ITC, as declared in Annexure-B, was Rs. 1,03,14,176/- but the petitioner had availed of ITC of Rs. 1,03,55,091/- in GSTR-3B. The third issue related to alleged wrong declaration of inverted/adjusted turn-over. Respondent no.2 found that the turn-over of inverted rated supply of goods and services was Rs. 6,19,21,252/- and the adjusted turn-over of outward supplies was declared of Rs. 6,43,16,025/-. However, the Form RFD-01 indicated the turn-over of inverted rated supply as Rs. 6,19,93,478/- and the adjusted turn-over of outward supplies as Rs. 6,43,88,251/-. The fourth issue related to ITC of Rs. 1,28,175/- claimed in respect of three invoices. According to respondent no.2, a claim of ITC in respect of the said invoices was beyond the period stipulated under Section 54 of the Act. The fifth issue related to the allegation that the petitioner was non-existent at its place of business. Thereafter, the sixth and seventh issue related to non-declaration of transfer of goods and capital assets from the sole proprietorship concern to the firm.

12. Respondent no.1 issued a separate show-cause notice dated 04.01.2022 calling upon the petitioner to show cause as to why its GST registration should not be cancelled. The petitioner was called upon to appear before respondent no.1 on 06.01.2022 at 11.40 a.m. It is important to note that the said show-cause notice reflected the reasons for proposing cancellation as under:-

“Transfer of business on account of amalgamation, merger/demerger, sale, lease or otherwise disposed of etc.”

13. Thereafter, on 14.01.2022, respondent no.1 issued an order cancelling the petitioner’s GST registration on the ground that the petitioner was non-existent at the principal place of business. It is material to note that the petitioner’s GST registration was cancelled retrospectively, with effect from 02.07.2017, that is, from the date on which the registration was granted.

14. The petitioner filed an application on 17.01.2022 seeking revocation of the cancellation of his GST registration. The petitioner claims that due to the pandemic, working professionals were not readily available and therefore, it had not updated the details on the portal. The petitioner claims that from 31.07.2021 he was carrying on the business in a partnership with another individual (Mr Tarun Goyal) and the firm had obtained a fresh registration with the principal place of business located in Haryana.

15. Respondent no.2 issued a show-cause notice dated 31.01.2022 proposing to reject the petitioner’s application for revocation of cancellation of its GST registration. The said show-cause notice indicated the reason for proposing rejection of the application as “the reason entered for revocation of cancellation

is not appropriate". The petitioner responded to the said show-cause notice by furnishing various documents, including electricity bills, ledger accounts and rent agreement, in support of its claim that the petitioner was carrying on the business as a sole proprietorship at the given premises (Khasra No.80, Gali No.4, Samaypur Village, North West Delhi, Delhi, 110042) prior to discontinuing the business as a sole proprietorship and continuing the same in the name of the firm from Plot No.571, Phase II, HHSI IDC, Barhi, Ganaur, Sonipat, Haryana, 131101, being the firm's principal place of business.

16. The petitioner's application seeking revocation of the cancellation of its GST registration was rejected by the order dated 22.02.2022 on the basis of the report dated 03.01.2022, which indicated that the petitioner was found to be non-existent and non-functional at the registered address. The petitioner was also faulted for not submitting an application for cancellation of the registration; not furnishing proof of shifting of capital goods, stock of raw material etc; and not providing any evidence of the termination of the rent agreement.

17. Aggrieved by the order dated 22.02.2022 passed by respondent no.2, the petitioner filed an appeal before respondent no.3. The petitioner reiterated that he shifted the business to Haryana. He explained that he had not filed any application for surrendering his GST registration on account of closure of the business from the registered place of business, as his application for refund of ITC was yet to be processed. He also provided proof of termination of the rent agreement. The petitioner also explained that he was pursuing the proceedings for seeking revocation of cancellation of the GST registration solely to claim refund of accumulated ITC, which related to the manufacturing activity carried out during the period April, 2020 to March, 2021. He submitted that on receipt of the fund, he would apply for cancellation of registration.

18. Respondent no.3 rejected the aforesaid appeal by the order dated 31.10.2022, which is impugned in this petition. Respondent no.3 held that the GST registration could be cancelled for sufficient cause being shown and the grounds as mentioned by the petitioner were not "justified and reasonable". Respondent no.3 also held that the petitioner had not adduced any evidence to prove his existence at the premises in question.

19. The petitioner, in the meantime, filed a reply to the show-cause notice dated 05.01.2022 in connection with the petitioner's application under Section 54 of the Act seeking refund of the accumulated ITC.

20. The petitioner had addressed the issues as raised in the show-cause notice. The petitioner submitted the figures as declared in GSTR-1 and GSTR-3B and explained that there was no discrepancy. Insofar as the difference of ITC between Annexure-B and GSTR-3B is concerned, the petitioner explained that the eligible ITC amounted to Rs. 1,03,14,176/- as it did not include ITC on services and capital goods amounting to Rs. 40,915/- for the financial year 2020-21. The form GSTR-3B disclosed the entire amount of Rs. 1,03,55,091/-.

21. Insofar as the third issue is concerned, the petitioner submitted a reconciliation statement establishing that there was no error in declaring the inverted/adjusted turn-over.

22. Insofar as the issue regarding claim of refund of ITC against three invoices pertaining to the month of September, 2019 is concerned, the petitioner accepted that he would not be entitled to claim ITC refund to the extent of Rs. 1,28,175/-, which pertained to invoices raised in the month of September, 2019.

23. Insofar as the physical verification is concerned, the petitioner explained that the constitution of the business had changed from proprietorship to partnership, however, the petitioner could not file the details on account of lack of knowledge on his part and the prevailing pandemic. The petitioner assured that it would make the necessary arrangement reflecting the transfer of business as a going concern. The petitioner emphasised that he was carrying on the business from its principal place of business during the period of April, 2020 to March, 2021 (the period for which the refund of ITC was sought). The petitioner also furnished a copy of the rent agreement and electricity bill for the premises in question. In addition, the petitioner also submitted a photograph of the current place of business and some invoices for the period of April to July, 2021 along with e-way bills to establish that it was carrying on business from its place of business till July, 2021. In addition, the petitioner also attached sample purchase, sales invoices along with e-way bills and bank statement of payment and receipt of the said invoices for the period in question. He also claimed that the transfer of business as a going concern was not taxable.

Reasons and Conclusions

24. At the outset, it is relevant to note that the learned counsel for the petitioner had submitted that the petitioner was desirous of surrendering his GST registration but had retained the same only for ensuring that his claim for refund of ITC is processed. A perusal of the impugned order dated 09.03.2022 rejecting the petitioner's application for refund of ITC indicates that the petitioner's request for refund of ITC was rejected principally on the ground that the petitioner was found to be non-existent by the Range Officer and his GST registration was cancelled. Insofar as the issues relating to discrepancies are concerned, the same were duly resolved. The petitioner had satisfactorily explained that there were no discrepancies as flagged by respondent no.2. Insofar as part of the claim beyond the period stipulated in Section 54 of the Act is concerned, the petitioner had accepted respondent no.2's proposal to reject the claim aggregating Rs. 1,28,175/- as it pertained to invoices issued in September, 2019. However, the remaining three issues flagged by respondent no.2 remained unresolved. The petitioner was found to be non-existent at its place of business and had not filed any returns regarding transfer of stock and capital goods.

25. Insofar as filing of returns for the transfer of stocks and capital goods is

concerned, the petitioner has readily accepted that he was remiss in not filing the returns in time. He has explained that this was for want of necessary professional assistance during the pandemic. There is no dispute that the petitioner was required to file the returns for the transfer of stock and capital goods to the newly constituted firm in July, 2021. Failure to file such return may invite the necessary consequences under the Act but the petitioner's claim for accumulated ITC on account of inverted tax structure cannot be withheld on that ground.

26. The principal question that requires to be considered is whether the petitioner's GST registration is liable to be cancelled and if so from which date.

27. There is no dispute that the petitioner had over a period from August, 2017 to November, 2022 filed its return and paid the necessary taxes. The petitioner has filed a statement for the tax liability from 01.07.2017 till November, 2022. The petitioner claims that it had transferred the business and continued it under the same name, albeit in partnership with another individual, with effect from 31.07.2021.

28. There appears to be no dispute that the firm constituted on 31.07.2021 had applied for and obtained GST registration in respect of its principal place of business in Haryana. The physical inspection carried out by the Range Officer had also indicated that a board was found hanging outside the premises which mentioned that the unit M/s A.S. Fasteners has been shifted to Badli Industrial Area. This supported the petitioner's contention that he was carrying on the business from its principal place of business till July, 2021 and thereafter from its principal place of business in Haryana.

29. In addition, the petitioner had produced the rent agreement as well as the electricity bills.

30. In view of the above, we find no ground for respondent no.1 to believe that the petitioner was non-existent from the date of its registration.

31. In terms of Section 29(2) of the Act, the proper officer has the discretion to cancel the registration from such date as he may deem fit if any of the reasons as set out in Section 29(2) of the Act are established. Section 29(2) of the Act is set out below:

"29. Cancellation [or suspension] of registration—

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(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,--

(a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

(b) a person paying tax under section 10 has not furnished 4[the return for a

financial year beyond three months from the due date of furnishing the said return]; or

(c) any registered person, other than a person specified in clause (b), has not furnished returns for 5[such continuous tax period as may be prescribed]; or

(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

Provided further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.”

32. In the present case, there is no allegation that the petitioner had obtained its registration by means of fraud, wilful misstatement or suppression of facts. In any view, there is no material to establish any such allegation as there is no dispute that the petitioner had filed his returns and paid the tax as disclosed by it. The only ground on which the petitioner’s registration has been cancelled is that he has contravened the provisions of the Act inasmuch as he has not filed the requisite returns for transfer of stock and capital goods. He has also not filed the requisite information disclosing transfer of business to the firm. Thus, it is assumed that the petitioner was non-existent. However, the material on record indicates that the petitioner was carrying on its business from its principal place of business in Delhi and had shifted it to Haryana. In these facts, the petitioner’s registration cannot be cancelled from the date he had obtained the same.

33. We are also unable to accept that the petitioner can be denied the refund of accumulated ITC solely on the ground that he had not filed the necessary information regarding transfer of business and other returns to establish the transfer of stocks and capital goods more so when the petitioner’s claim for inverted tax structure as well as the accumulation of ITC has been verified by respondent no.2.

34. In the peculiar circumstances of this case, we consider it apposite to direct that the impugned order dated 14.01.2022 cancelling the petitioner’s registration with effect from 02.07.2017 be set aside. The respondent no.1 shall initiate proceedings for cancellation of the petitioner’s registration with effect from 31.07.2021 and also determine the amount of tax, penalty or interest that may be payable by the petitioner for not reflecting the transfer of stock and capital goods to the firm.

35. The impugned order dated 09.03.2022 rejecting the petitioner’s application

for refund is also set aside. Respondent no.2 is directed to reconsider the petitioner's application for refund in view of the directions issued above.

36. The petition is disposed of with the aforesaid directions.