(2020) 09 DEL CK 0072

In the Delhi High Court

Case No : Civil Writ Petition No. 6231 Of 2020

M/S Krishna International APPELLANT

Vs

Commissioner Delhi Goods And Service Tax RESPONDENT

Date of Decision : 11-09-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Central Goods And Services Tax Act, 2017 — Section 107

Citation : (2020) 09 DEL CK 0072

Hon'ble Judges : Dhirubhai Naranbhai Patel, CJ;Prateek Jalan, J

Bench : Division Bench

Advocate : Jitendra Kr. Jha, Dhananjaya Mishra

Final Decision : Disposed Of

Judgement

D. N. Patel, CJ

The proceedings in the matter have been conducted through video conferencing.

CM APPL.22283/2020 (exemption) & CM APPL.22284/2020 (exemption)

Exemption allowed, subject to all just exceptions.

The applications are disposed of.

W.P.(C) 6231/2020

1. This petition has been preferred for the following prayers:

"A. direct the respondent authorities to refund the amount of rupees 12,83,006/- (Twelve lac Eighty-three thousand and Eight) towards the claim dated 15/10/2019, and Rs. 7,68,938/- (Seven Lac Sixty-eight thousand nine hundred and thirty-eight) toward the claim dated 23/01/2020 totalling to Rs.20,51,944.00 (twenty lac twenty thousand and eighty-three) only to the petitioner along with an interest @2% per month on the same from the date the same amount which was due to be paid to the petitioner and or

B. This Hon'ble court may graciously be pleased to quash the order dated 17/06/2020 (Annexure PI 4)

C. This honorable court may be pleased to direct the respondent authorities to pay a sum a sum of 10,00,000/-(Ten lakhs) only towards damages suffered by the petitioner.

D. This honorable court may further be pleased to pass any other or further orders as may deemed fit and proper in the fad and circumstances of the case in favor of the petitioner and against the respondent in the interest of justice."

2. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, it appears that there are two refund claims made by this petitioner under the Goods and Services Act, 2017.

3. The first claim, which was for Rs. 12,83,006/- and was dated 15th October, 2019 has been rejected by the respondents vide order dated 17th June, 2020 (Annexure P-4 to the memo of this writ petition).

4. The aforesaid order is appealable under Section 107 of the Goods and Services Act, 2017, and no writ petition ought to be ebtertained in respect thereof.

5. The Hon'ble Supreme Court in Commissioner of Income Tax & Ors. vs. Chhabil Dass Agarwal, (2014) 1 SCC 603 held as under:

"15. Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case [AIR 1964 SC 1419] , Titaghur Paper Mills case [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

(emphasis supplied)

6. As there is an alternative remedy available to this petitioner, we are not inclined to entertain the prayer qua order dated 17th June, 2020. The petitioner is at liberty to prefer an appeal in accordance with law before the appropriate forum.

7. So far as the second claim of refund of Rs. 7,68,938/- is concerned, which was made on 23rd January, 2020 (Annexure P-3 to the memo of this petition), the

same is yet to be decided by the respondents.

8. We hereby direct the concerned respondent-authorities to decide the refund application dated 23rd January, 2020preferred by this petitioner, which is at Annexure P-3, in accordance with law, rules, regulations and Government policies applicable to the facts of the case within a period of three weeks from today, after giving adequate opportunity of being heard to the concerned party.

9. With these observations, this writ petition is hereby disposed of.