

(2023) 06 GUJ CK 0058

In the Gujarat High Court

Case No : R/Special Civil Application No. 6587 Of 2023

M/S Stallion Energy Private Limited

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 15-06-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Gujarat Goods And Services Tax Act, 2017 — Section 73, 73(9), 78, 83, 107

Citation : (2023) 06 GUJ CK 0058

Hon'ble Judges : Vipul M. Pancholi, J;Devan M. Desai, J

Bench : Division Bench

Advocate : Viral V Dave, Pranav Trivedi

Final Decision : Allowed

Judgement

Vipul M. Pancholi, J

1. Heard learned advocate Mr. Viral V. Dave for the petitioners and learned AGP Mr. Pranav Trivedi for the respondents.

2. The present petition is filed under Article 226 of the Constitution of India in which the petitioner has prayed for the following relief/s:

"a) That this Hon'ble Court be pleased to issue a Writ of Certiorari quashing and setting aside the provisions attachment proceedings under Section 83 of the Act by the Assistant Commissioner vide dated 16.06.2022 at Annexure D to this petition and be further pleased to direct the Respondents to return, repay and refund to the petitioner the amounts as prayed for by them in Letter dated 1.7.2022 at Annexure D to this petition;

b) That this Hon'ble Court be pleased to issue a writ of declaratory mandamus holding that the Petitioners are entitled to return, repay and refund the amount as prayed for by them in the letter dated 01.07.2022 at Annexure ____ to this petition under the law as applicable to the facts of the present case and be

further pleased to direct the respondents, their servants, their agents to return, repay and refund the said amount along with interest at such rate as is deemed fit by this Hon'ble Court;

c) Pending hearing and final disposal of this petition, this Hon'ble Court be pleased to direct the Respondents, their servants, their agents to return, repay and refund to the Petitioner the amounts prayed for by them in the letter dated 01.07.2022 at Annexure D to this Petition on such terms and condition as are deemed just and proper by this Hon'ble Court;

d) Ex parte ad interim relief in terms of para c) above be granted;

e) Such other and further relief as are deemed just and proper in the facts and circumstances of the case may please be granted."

3. It is the case of the petitioner that petitioner No.1 is the company registered under the Companies Act, 1956 holding GSTIN '24AANCS0926P1ZV' and is engaged in the business of supply of goods viz. coke and semi coke of coal. It is stated that the respondent issued a show cause notice under Section 73 of the Gujarat Goods and Services Tax Act, 2017 (hereinafter referred to as the 'Act' for short) which culminated into adjudication order. It is further stated that adjudication order came to be passed on 02.03.2022. As per the said order the petitioner was directed to make the payment of total amount of Rs.56,14,388/-. It is also stated that thereafter order of provisional attachment of the property under Section 83 of the Act came to be passed on 16.06.2022. It is submitted that out of the total amount of Rs.56,14,388, Rs.46 lakhs came to be withdrawn by the respondents from the bank account of petitioner maintained with HDFC Bank.

4. It is further stated that the petitioner preferred an appeal on 04.07.2022 under Section 107 of the Act before the Appellate Authority. However, there was delay in preferring the said appeal and therefore petitioner has filed separate application for condonation of delay. Copy of the said application is produced at page 56 of the compilation.

5. It is also stated that as per the provisions contained in Section 107 of the Act, the petitioner is required to pre-deposit 10% of the amount of tax before the Appellate Authority. However, the respondents withdrew an amount of Rs.46 lakh from the account of the petitioner maintained with HDFC Bank. The petitioner has, therefore, urged in the present petition that the respondents be directed to refund the remaining amount i.e. Rs.42,44,664/-. For the said purpose, petitioner sent various letters to the respondents and requested to refund the said amount. However, no action has been taken by the respondents, and therefore, the petitioner has preferred the present petition.

6. Learned advocate Mr. Dave appearing for the petitioner referred the averments made in the memo of the petition and thereafter referred the provisions contained in Section 107 of the Act. It is contended that at the time of

filing the appeal, the petitioner is required to pre-deposit 10% of the amount of tax assessed by the respondent authority. However, the respondents have already withdrawn Rs.46 lakh from the account of the petitioner maintained with HDFC Bank and therefore appropriate direction be issued to the respondents to refund the remaining amount i.e. Rs.42,44,664/- to the petitioner.

7. On the other hand, learned AGP Mr. Trivedi has opposed this petition and referred the provisions contained in Section 73(9) read with Rules 142(5) and 142(6). It is submitted that order dated 02.03.2022 came to be passed in FORM GST DRC-07. Copy of the said order is placed on record during the course of hearing of this petition. It is further submitted that notice in the prescribed form was given to the petitioner. Learned AGP at this stage has referred the provisions contained in Section 78 of the Act. It is pointed out that on completion of period of three months from the date of order dated 02.03.2022, the respondent authority has recovered an amount of Rs.46 lakh and thereafter on 04.07.2022 the petitioner preferred an appeal before the Appellate Authority under Section 107 of the Act. Learned AGP, therefore, submitted that once the amount of Rs.46 lakh is already recovered as per the provisions contained in the Act read with the Rules, it is not open for the petitioner to request for refund of the said amount merely because the petitioner has preferred an appeal under Section 107 of the Act. Learned AGP further submits that if the appeal of the petitioner is allowed by the Appellate Authority and if the Appellate Authority gives directions to the respondents to refund the amount, the respondents are duty bound to refund the amount and therefore at this stage it is not open for the petitioner to make a request for refund of the amount. Learned AGP, therefore, urged that the petition be dismissed.

8. Having heard the learned counsel appearing for the parties and having gone through the material placed on record, it would emerge that pursuant to the show cause notice issued under Section 73 of the Act, adjudication order dated 02.03.2022 came to be passed in FORM GST DRC 07, whereby, the petitioner was directed to make payment of Rs.56,14,388/- within the stipulated time. It is not in dispute that the petitioner preferred an appeal under Section 107 of the Act after the period of limitation i.e. after a period of three months. Along with the said appeal, petitioner has also preferred separate application for condonation of delay. The said proceedings are still pending before the Appellate Authority. Now, it is the contention of the petitioner that, in the meantime, on completion of period of three months, the respondents have passed an order of provisional attachment under Section 83 of the Act and thereby amount of Rs.46 lakh came to be withdrawn from the account of the petitioner maintained with HDFC Bank. It is the case of the petitioner that as per the provisions contained in section 107 of the Act, the petitioner is required to pre-deposit 10% of the amount of tax i.e. Rs.3,55,334/-. However, the respondents have recovered an amount of Rs.46 lakh and therefore it is prayed that the respondents be directed to refund the remaining amount of Rs.42,44,664/- to the petitioner. We are of the view that such contention is misconceived in view of the provisions contained

in Section 73(9) read with Sections 78 and 107 of the Act. If the appeal filed by the petitioner is allowed by the Appellate Authority, it is always open for the petitioner to make such request before the Appellate Authority that direction be issued to the respondents to refund the amount. However, the present petition is misconceived and therefore we are not inclined to entertain this petition. The petition is, accordingly, dismissed.