(2022) 10 DEL CK 0184

In the Delhi High Court

Case No : Civil Writ Petition No. 4488 Of 2020, Civil Miscellaneous Application No. 16187 Of 2020

Uflix Industries APPELLANT

Vs

Union Of India & Ors RESPONDENT

Date of Decision : 10-10-2022

Acts Referred:
Central Goods & Services Tax Act, 2017 — Section 83, 83(2)

Citation : (2022) 10 DEL CK 0184

Hon'ble Judges : Rajiv Shakdher, J;Tara Vitasta Ganju, J

Bench : Division Bench

Advocate : Dr. Avinash Poddar, Sushila Narang

Final Decision : Disposed Of

Judgement

Rajiv Shakdher, J

1. The following substantive prayers have been made in the writ petition:

i) Issue a writ of certiorari or any other writ, order or direction in the nature thereof quashing the impugned attachment order dated 18.03.2020;

ii) Issue a writ of certiorari or any other writ, order or direction in the nature thereof quashing the order no 02/2020 dated 10.06.2020 issued by respondent no. 3;

iii) Issue a writ of mandamus or any other writ, order, or direction declaring the action of respondent no 3 as without jurisdiction and without authority of law;

iv) Pending admission, hearing and till, final disposal of this, petition, Your Lordships may be, pleased to direct the Respondents :

a. from resorting to any coercive measure against the Petitioner;

b. to defreeze the bank account against appropriate/reasonable undertaking by the petitioner in favour of his jurisdictional officer;

2. The record shows that a provisional attachment was issued on 18.03.2020, qua the petitioner, in the exercise of powers under Section 83 of the Central Goods and Services Tax Act, 2017 [in short "CGST Act".]

2.1. According to Ms Sushila Narang, who appears on behalf of respondents/ revenue, investigation was carried out against the petitioner, on account of the fact that the petitioner had been availing input tax credit (ITC), albeit fraudulently.

2.2. The amount which the petitioner, according to Ms Narang, availed as ITC, is Rs.60,08,750/-.

2.3. This amount, along with interest, has ballooned to Rs.75,16,900/-.

3. Dr Avinash Poddar, who appears on behalf of the petitioner, had informed us on 04.08.2022, that ITC amounting to Rs. 75,16,900/- had been reversed.

3.1. It is in these circumstances, on the said date, we had asked the counsel for the respondents/revenue to obtain instructions.

3.2. The respondent/revenue, on the said date, was represented by Ms Suhani Mathur, an associate of Mr Harpreet Singh, senior standing counsel for the respondents/revenue.

4. Thereafter, on the next date of hearing i.e., 29.08.2022, the contesting respondents/revenue were represented by Ms Sushila Narang, who had informed us that the investigation initiated against the petitioner stood concluded and that the respondents/revenue were in process of lifting the provisional attachment order.

4.1. We may note that the record shows [something which has also been noted in our order dated 29.08.2022] that notice in the writ petition was issued as far back as on 24.07.2020, despite which, counter-affidavit(s) have not been filed on behalf of the respondents, which includes the contesting respondents/revenue.

5. Ms Narang says that a penalty is also required to be recovered from the petitioner.

6. To our minds, the matter has been hanging fire without the respondents/ revenue taking requisite steps, either vis-a-vis the petition or with regard to imposition and/or recovery of penalty.

7. As indicated above, the petitioner has taken a position that the ITC alleged to have been availed by the petitioner fraudulently, has been reversed and the reversal includes the interest component, as well.

8. Thus, given the fact that the present attachment has continued beyond the timeframe prescribed under Section 83(2) of the CGST Act, we are inclined to direct that the same be lifted.

8.1. It is ordered accordingly.

8.2. Needless to add, the respondents/revenue will be free to take further steps in the matter, albeit, as per law.

9. We may also note that in view of the aforesaid directions issued by us with regard to the lifting of the provisional attachment order, Mr Poddar says that the relief sought via prayer clause (ii), [whereby a direction is sought for the quashing the order dated 10.06.2020 passed by respondent no. 3], is not pressed.

10. The writ petition is disposed of, in the aforesaid terms.

11. Consequently, pending application shall stand closed.