

(2020) 06 DEL CK 0160

In the Delhi High Court

Case No : Civil Writ Petition No. 3618 Of 2020

Watermelon Management Services Private Limited

APPELLANT

Vs

Commissioner, Central Tax, Gst Delhi (East) & Anr

RESPONDENT

Date of Decision : 29-06-2020

Acts Referred:

Central Goods And Service Tax Act, 2017 — Section 62, 63, 64, 67, 70, 73, 74, 83, 83(1)

Citation : (2020) 06 DEL CK 0160

Hon'ble Judges : Manmohan, J;Sanjeev Narula, J

Bench : Division Bench

Advocate : Sunil Upadhyay, Harpreet Singh

Final Decision : Disposed Of

Judgement

Manmohan, J

1. The petition has been heard by way of video conferencing.

2. Present writ petition has been filed challenging the impugned order dated 03rd June, 2020 passed by respondent No.1 whereby it has kept the provisional attachment orders dated 05th March, 2020 as well as corrigendum dated 01st June, 2020 alive after specifying that the reason for attachment was that proceeding under Section 67 of Central Goods and Service Tax Act (hereinafter referred to as "CGST Act") was pending against the petitioner. However, the respondent No.1 accepted the fact that it should not conduct parallel investigation and accordingly, the respondent No.1 handed over its investigation to Directorate General of Goods and Services Tax Intelligence (for short "DGGI") who had been investigating the matter since 05th December, 2018. The relevant portion of the impugned order reads as under:-

"1.3 Searches were also conducted in the registered premises of 8 input suppliers of M/s WMSPL who were suspected of supplying only invoices without actually supply of goods/services. Details are as follows:-

S. No.

GSTIN

Trade Name

Address

ITC availed in 2017-18

ITC availed in 2018-19

Total

1.

09FFPPS5 335HIZR

Adinath Enterprises

A-178, Second Floor, Realtek Noida, UP201301

2,38,09,880

2,38,09,880

2.

06DYYPK 0370J1ZX

Sai Enterprises

VPO Bhonds, Sohna, Haryana122015

1,75,15,219

1,75,15,219

3.

07DVKPK 2527Q1ZY

Bhawani Enterprises

Kh.No.10/25, 1 st Floor, Village Burari, Near Chetan Bihar Mandir Road,
Delhi110084

1,30,66,113

1,30,66,113

4.

07AVJPC3 848C1ZT

Zetex Enterprises

Office No.12, Plot no.7/8, Madhu Vihar, Delhi-110092

1,07,59,924

71,52,054

1,79,11,977

5.

09CLEPA7 571F1Z4

Den Enterprises

30-A, Devika Tower, Ghaziabad, U.P.-201001

71,49,072

88,57,818

1,60,06,890

6.

07EPFPK7 269D1ZO

Evergreen Enterprises

Office No.5, Plot no.255, Ground floor, Karkakrdooma Delhi-110092

20,17,028

20,17,028

7.

07AAEFU 6008QIZP

Ultra Enterprises

P.No.55 and 56, First Floor, Office No.15, Madhu Vihar, Delhi-110092

19,92,046

19,92,046

8.

07BVLPG 0932L1ZG

Citi Enterprises

A 1047, Ground Floor, G D Colony, Mayur Vihar, Delhi-110096

17,58,035

17,58,035

7,80,67,316

1,60,09,872

9,40,77,188

1.4 All 8 premises were either found to be non-existent and in case the addresses were found, they were not being used by the registered suppliers of M/s WMSPL. Hence, it is evidence that the above mentioned 8 suppliers were created solely for the purpose of passing on fake ITC.

1.5 Further, Shri Gulzar, Manager (IR & Compliance) at M/s Watermelon Management Services Private Limited in his statement recorded on 04.03.2020 under Section 70 of the CGST Act, 2017 stated that the company had never received any services from the above mentioned firms.

1.6 During investigation it was also found that another company by the name of M/s Watermelon HR Services Private Limited (Part of Watermelon group) also appeared to have availed fake ITC of approx. Rs.2,04,82,938/- from the same non-existent suppliers that are suspected to have provided fake ITC to M/s Watermelon Management Services Private Limited.

1.7 Shri Gulzar, Manager (IR & Compliance) and Shri Kanhaiya Jha, Accountant, M/s Watermelon Management Services Private Limited in their voluntary statement dated 04.03.2020, stated that documents/records pertaining to the period before April 2018 were not being maintained at any of the offices of the company. No financial/account records (not even in soft-copy form) were found during the search of these premises.

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3.4 They submitted that as per the letters dated 05.03.2020 sent to the Banks for provisional attachment of the company's bank accounts; proceedings have been launched against the company under Section 74 of the CGST Act, 2017. To this they were informed that Section 83 of CGST Act, 2017, refers to only provisional attachment of property including bank accounts and that it is not final attachment. They were also informed that investigation is currently underway so there is no question of issuance of SCN at this juncture, SCN will be issued once the investigation is concluded. They were also informed that corrigendum dated 01.06.2020 have already been sent to the banks by the department wherein they have been informed that the investigation has been launched under Section 67 and not Section 74 of the CGST Act, 2017.

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4.1 The bank accounts of the company were provisionally attached on 05.03.2020 under Section 83 of the CGST Act, 2017 to safeguard Government revenue. This was done on the basis of ample evidence that the company had fraudulently availed ITC on the basis of fake input invoices and that ITC had been used to discharge their tax liability.

Section 83 (1) reads as follows:

Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.

Thus Section 83 of CGST, Act, 2017, clearly provides that provisional attachment can be done during pendency of proceedings for the purpose of protecting the interest of the Government revenue.

4.2 Since 05.03.2020, the company has been given multiple opportunities and sufficient time to submit the relevant documents/records to establish the genuineness of the ITC availed by them. The Directors have also been given sufficient time to appear and joint the investigation. However, even in the multiple written submissions made the company, no documents/details have been submitted to establish the genuineness of the ITC availed by the company, nor have they commented on the confessions made by their employees, viz., Shri Gulzar, Manager (IR & Compliance) and Shri Kanhaiya Jha, Accountant. The company has shown no intent to co-operate with the investigation since 05.03.2020. They have also made no attempt to pay the amount of tax fraudulently availed by them as ITC.

4.3 M/s WMSPL have submitted with the same issue for the same period is already being investigated by DGGI and that parallel investigation should not be carried out. In this respect it is noted that the investigation has already been handed over to DGGI by this office and that further investigation in the present case will be conducted by DGGI.

4.4. It is pertinent to note here that in a recent investigation initiated by this office against M/s Orion Security Solutions Private Limited for wrong availment/mis-utilization of ITC and tax collected but not deposited, Bank accounts of the company were provisionally attached by this office during the course of investigation under Section 83 of CGST Act, 2017. M/s Orion Security Solutions Private Limited filed the writ petition for de freezing of provisionally attached Bank accounts. The Hon'ble Delhi High Court via order dated 16.03.2020 disposed the said writ petition and held that the accounts be de-freezed only after the party committed to deposit the entire GST liability within a specified time frame. This office was able to recover revenue of approx. Rs.28 crore in that particular case on orders of the Hon;ble High Court.

4.5 The company has been operating from unregistered premises in Delhi as well as Uttar Pradesh whereas the only registered premises is closed and not in use which shows the intent of the company to hide its operations. Also, the company has not maintained any records of any transactions undertaken during the F.Y. 2017-18 which again showed intent to evade. The Directors of the company also

failed to comply with summons issued to them and even though multiple letters were written by the party to this office, the party did not provide any evidence to establish genuineness of the ITC availed by it."

3. Learned counsel for petitioner points out that though the DGGI was investigating the matter since 05th December, 2018, yet he had never passed any attachment/freezing order against the petitioner. He submits that since no proceeding has been launched under Section 74 of the CGST Act and the raid and search of the petitioner's premises had concluded on 04th and 05th March, 2020, the impugned provisional attachment order is without jurisdiction and illegal.

4. Learned senior standing counsel for the respondent states that the petitioner has maintained no record of transaction undertaken during the Financial Years 2017-18 and 2018-19. He also states that the petitioner has not provided any evidence of genuineness of Input Tax Credit (ITC) availed by it and/or eight other companies. He further states that the Directors of the petitioner have failed to comply with summons issued to them.

5. On the last date of hearing, we had directed officers of the DGGI and the Commissioner of CGST, Delhi (East) to appear before this Court.

6. Today, both the officers who appeared in person via video link in unison state that their investigations show that prima facie there has been wrongful availment of ITC by the petitioner. Officer from the DGGI office states that though fifteen summons had been issued to the Director of the petitioner, yet he had appeared only on three occasions and that too did not furnish the documents as asked for.

7. In rejoinder, learned counsel for the petitioner states that documents in three tempos have been filed by the petitioner with the DGGI.

8. Keeping in view the serious allegations that have been levelled against the petitioner by the officers of DGGI as well as by the Commissioner of CGST, Delhi (East), this Court is of the view that ends of justice would be met if the DGGI is directed to conclude the investigation in the present case within a period of three months.

9. Consequently, the present writ petition is disposed of with a direction to DGGI to conclude the investigation within three months. Needless to say, petitioner including its Directors shall cooperate with the respondents in the investigation of the present case. Further, if upon conclusion of investigation DGGI is satisfied with the stand of the petitioner, then it shall close the proceeding and if not, issue an appropriate show cause notice in accordance with law. All the rights and contentions of the parties are left open.

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.