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2022 (3) TMI 182 - GUJARAT HIGH COURT

ADDITIONAL DIRECTOR GENERAL VERSUS PRANIT HEM DESAI

MISC. CIVIL APPLICATION (FOR RECALL) NO. 2 of 2019 In R/SPECIAL CIVIL APPLICATION NO. 9392 of 2019 With 9396 of 2019, 9397 of 2019, 9398 of 2019, 9399 of 2019, 9400 of 2019

Dated: - 2-2-2022

Provisional attachment of bank accounts of the opponents - Section 83 of the CGST Act, 2017 - HELD THAT:- In fact so far as the controversy raised in the main matters is concerned, the same has come to an end today. The orders of the provisional attachment of the bank accounts were ordered to be quashed and set aside. Nothing further is required to be done in that regard.

The matter as on date has reached to the stage of issue of show cause notice to the opponents. If the show cause notice is issued, the opponents will have to give an appropriate reply to the same. Thereafter, the adjudication would take place and the final liability will be determined in accordance with law, if any.

It will be open for the department to issue a show cause notice in the manner they propose to and if the opponents are aggrieved in any manner with the contents of the show cause notice, they can raise the issues accordingly by way of their reply. As on date, there is nothing we need to clarify. It is also open for the department to proceed against all those persons in whose favour the input tax credit availed by the opponents stood transferred respectively in their favour - Application disposed off.

Judgment / Order

HONOURABLE MR. JUSTICE J.B. PARDIWALA AND HONOURABLE MS. JUSTICE NISHA M. THAKORE

Appearance:

MR ANKIT SHAH(6371) for the PETITIONER(s) No.

MR DHAVAL D VYAS(3225) for the PETITIONER(s) No.

MR D K TRIVEDI(5283) for the RESPONDENT(s) No.

RULE NOT RECD BACK for the RESPONDENT(s) No.

IA ORDER

(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

1. Since the issues raised in all the captioned applications are the same and the clarification sought for

is also of the self same order passed by this Court, those were taken up for hearing analogously and are being disposed of by this common order.

2. The subject matter of challenge in the main matters was to the orders of provisional attachment of bank accounts of the opponents under Section 83 of the CGST Act, 2017. While allowing all the six writ applications, this Court observed in paragraphs 23 and 24 respectively as under:

“23. Without entering into any other controversy, we are inclined to allow all the six writ applications on the short ground that during the period between July 2017 and May 2019, the total input tax credit availed by the writ applicants aggregates to ₹ 59,49,18,103/- (Rupees Fifty Nine Crore Forty Nine Lakh Eighteen Thousand One Hundred Three only), whereas the total tax paid during this period aggregates to ₹ 63,62,41,525/- (Rupees Sixty Three Crore Sixty Two Lakh Forty One Thousand Five Hundred Twenty Five Only). The same is indicative of the fact that against the availment of credit of ₹ 59,49,18,103/- (Rupees Fifty Nine Crore Forty Nine Lakh Eighteen Thousand One Hundred Three only), an amount of ₹ 63,62,41,525/- (Rupees Sixty Three Crore Sixty Two Lakh Forty One Thousand Five Hundred Twenty Five Only) came to be paid by way of tax. It appears that an amount of ₹ 4,13,23,422/- (Rupees Four Crore Thirteen Lakh Twenty Three Thousand Four Hundred Twenty Two only) has been paid in excess than the amount of credit availed. In such circumstances, it cannot be said that the interest of the government revenue is at a stake.

24. We are at one with Mr. Trivedi that even if it is assumed that the allegations as levelled by the department are correct and the credits though not available were wrongly availed since the tax had been paid, though it was not payable having regard to the fact that there was no supply of goods, the availment of credits could be said to be justified on two counts: (1) it is a revenue neutral satisfaction and (2) payment of tax although not payable yet is to be treated if unavailable credits are reversed if they were wrongly paid.”

3. The Co-ordinate Bench to which one of us (J.B. Pardiwala J.) was a party at the relevant point of time recorded that all the six writ applications deserved to be allowed on the short point that during the period between July, 2017 and May, 2019 i.e. the period during which the opponents are said to have wrongly availed the input tax credit to the tune of ₹ 59,49,18,103/- could be said to have been adjusted in view of the fact that the opponents paid a total tax during that period aggregating to ₹ 63,62,41,525/-. In fact so far as the controversy raised in the main matters is concerned, the same has come to an end today. The orders of the provisional attachment of the bank accounts were ordered to be quashed and set aside. Nothing further is required to be done in that regard. However, Mr. Vyas, the learned ASG pointed out that the total input tax credit availed by the opponents herein aggregating to ₹ 59,49,18,103/- was further transferred to various other individuals/parties. Such parties must have utilized the same accordingly.

4. In such circumstances, what is sought to be conveyed by Mr. Vyas is that the payment of total tax aggregating to ₹ 63,62,41,525/- would not put an end to the entire liability of the opponents. Mr. Vyas, wants this Court to clarify this much.

5. On the other hand, this writ applications are vehemently opposed by Mr. D.K. Trivedi, the learned counsel appearing for the opponents-original writ applicants. He raised a preliminary objection as

regards the very maintainability of these civil applications. He would submit that factually nothing incorrect has been recorded by this Court in paragraph 23 of the original order. He would submit that this Court took a particular view of the matter having regard to the materials on record and if the revenue is aggrieved in any manner by such view then they should challenge the order before the higher forum. He would submit that there is absolutely nothing which requires to be clarified.

6. We are informed that the matter as on date has reached to the stage of issue of show cause notice to the opponents. If the show cause notice is issued, the opponents will have to give an appropriate reply to the same. Thereafter, the adjudication would take place and the final liability will be determined in accordance with law, if any.

7. Mr. Vyas, wants us to clarify that what has been factually recorded in the paragraph 23 should not come in the way of the department while issuing show cause notice in a particular form or mode. What we have been able to understand from Mr. Vyas is that the payment of tax as recorded in paragraph 23 should not be an end of the matter. The Revenue would like to put it in a different way. As and when the show cause notice is issued, at that point of time, the opponents should not say that what has been stated in the show cause notice is something which runs contrary to what has been observed in paragraph 23.

8. In the aforesaid context, we do not propose to say anything further except that it will be open for the department to issue a show cause notice in the manner they propose to and if the opponents are aggrieved in any manner with the contents of the show cause notice, they can raise the issues accordingly by way of their reply. As on date, there is nothing we need to clarify. It is also open for the department to proceed against all those persons in whose favour the input tax credit availed by the opponents stood transferred respectively in their favour. Since what has been stated in paragraphs 23 and 24 are seriously disputed, we permit the department to take a stance if at all they intend to that the payment of tax shall not absolve the opponents of liability for wrongful availment of the input tax credit. In other words, Revenue is not ready to accept that it is a case of neutral satisfaction. If such is the stance of the Revenue in the show cause notice that may be issued to the opponents in future, we keep it open for the opponents to give an appropriate reply to the same to the department and thereafter, proceed further.

9. With the aforesaid, all these applications stand disposed of.

10. Any of the above observations shall not be construed saying or imputing anything against the opponents as asserted by the Revenue.

Citations: in 2022 (3) TMI 182 - GUJARAT HIGH COURT

1. [2019 \(9\) TMI 741 - GUJARAT HIGH COURT](#)