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By Nidhi, Advocate



Judgment No.: 033
Dt.: 25-12-2023



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Judgment Deals With

Section/Rule	Section 67 read with Section 54
Authority	Delhi High Court
Case Name	Sapphire Intrex Limited VS Union Of India & Ors.
Dated	14 th December, 2023

Brief Facts:

Search operation was conducted at the premises of the petitioner on 20.10.2021, by the officers of GST Anti-Evasion department, u/s 67(2) of the Act. During search, the petitioner was made to deposit ₹2,30,00,000/-, which was coercively paid by it vide FORM GST DRC-03. The petitioner, thereafter, wrote a letter and an email dated 21.10.2021, to the Inspector, Office of Joint Commissioner (Anti-evasion), claiming that the payment made by the petitioner is under protest and that it reserves the right to apply for refund of the amount so deposited. The Department issued a SCN dated 23.06.2022 demanding the recovery of GST amounting to ₹36,35,359/- under Section 74(1) of the Act and further sought to appropriate the amount of ₹2,30,00,000/-, deposited by the petitioner during investigation, towards the proposed demand. The petitioner, in terms of Section 54 of the Act read with Rule 89 filed refund claim in RFD-01 claiming refund of the amount of ₹2,30,00,000/-. The Department issued the deficiency memos dated 28.07.2022 in RFD-03). The petitioner, in response to the first set of deficiency memos filed rectified refund claims dated 04.08.2022. The Department thereafter issued second set of deficiency memos dated 22.08.2022 (in FORM GST RFD-03) pointing out the same deficiencies as were pointed out in the first set of deficiency memos and further advised the petitioner to once again file fresh refund claims after the rectification of the said deficiencies. The petitioner filed a letter dated 07.09.2022 requesting to process the rectified refund claim dated 04.08.2022, along with applicable interest. The Department issued the impugned letter dated 17.10.2022, intimating the petitioner that as the SCN dated 23.06.2022 issued to it has not been adjudicated, the refund claims filed by it cannot be processed. It further recommended the petitioner to file fresh refund claim after adjudication of the SCN.

Contention of Petitioners:

It is a settled principle of law that no amount can be recovered by the department before the demand against the assessee is crystallised. The payment of ₹2,30,00,000/- made by the petitioner, while the search proceedings had not been concluded before issuance of SCN dated 23.06.2022, amounts to an illegal collection/recovery and is in contravention of the Instruction No. 1/2022-2023 (GST Investigation) dated 25.02.2022 issued by the CBIC. Further, unless there is an assessment and demand, the amount deposited by the petitioners cannot be appropriated and department is liable to refund the said amount. The amount which is illegally collected and retained without issuance and adjudication of show cause notice is violative of

Article 265 of the Constitution.

The non-issuance of acknowledgement from the proper officer in FORM GST DRC-04 under Rule 142(2) of the CGST Rules is evident that the said payment was voluntary.

The impugned second deficiency memo dated 22.08.2022 issued by the Department are in contravention of the paragraph 11 of the Circular dated 18.11.2019 as the petitioner had rectified the deficiencies mentioned in the first deficiency memos dated 28.07.2022 by attaching the relevant documents. The said circular issued by the CBIC stipulates that no second deficiency memo is to be issued in respect of refund application filed afresh, after rectification of deficiencies, unless the earlier deficiencies remain unrectified, or any other substantive deficiency is noted subsequently, and the same is binding on the Department.

The letter dated 17.10.2022, which in effect rejects the refund claim filed by the petitioner, without giving the petitioner any show cause notice and/or any opportunity of being heard, is illegal. It is issued in violation of the principles of natural justice and contrary to the binding Circular dated 18.11.2019. The adjudication of the SCN dated 23.06.2022 is immaterial and not a pre-requisite for processing of the refund claims filed by the petitioner under the residuary category as the refund is not arising as a result of any order or proceedings. GST laws do not mandate that in case a show cause notice is issued to an applicant, his refund claims cannot be processed unless the said notice is adjudicated.

Contention of Department:

The petitioner was well aware that the SCN dated 23.06.2022 issued to it, in which the entire amount of ₹2,30,00,000/- has been proposed to be appropriated against the tax/interest & penalty, is pending for adjudication. Therefore, the petitioner's liability cannot be ascertained until and unless the SCN dated 23.06.2022 is adjudicated/decided.

Findings & Decision of the Court:

The Petitioner was coerced to make the deposit of tax through the cash ledger 8:41pm while the search and inspection proceedings were continuing at the material time. While the payment was made by the petitioner, it had not admitted the liability to pay the amount. It is also not in dispute that there is no adjudication of the liability and the Show Cause Notice demanding the recovery of GST and the appropriation of the amount of ₹2,30,00,000/- deposited by the petitioner was issued on 23.06.2022, that is, much after the said deposit. The amount was deposited during the course of investigation.

If any amount is collected without any authority of law, the same amounts to depriving the person of its property and infringes its rights under Article 300A of the Constitution of India. In the facts of the present case, the deposit was made by the petitioner under duress and compelling circumstances. The search operations started at around 3:45 p.m. on 20.10.2021 and went way beyond the normal business hours, that is, up to 00:30 a.m. on 21.10.2021.

It is not disputed that any voluntary deposit in Form GST DRC-03 is to be followed by an acknowledgement accepting the payment as being voluntarily made by issuance in Form GST DRC-04. The Department has not issued Form GST DRC-04 as required under the CGST Rules.

The deposit made by the petitioner has been held to be involuntary and the Department was directed to forthwith process the petitioner's claim for refund.

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