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By Nidhi, Advocate



Judgment No.: 039
Dt.: 01-01-2024

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Judgment Deals With

Section/Rule	Section 67
Authority	Delhi High Court
Case Name	Santosh Kumar Gupta Prop. Mahan Polymers VS Union Of India Through Secretary & Ors.
Dated	05 th December, 2023

Brief Facts:

The search was conducted in petitioner's business premises u/s 67 of the CGST Act pursuant to the authorization issued in FORM GST INS-01 dated 11.11.2022. During the course of the search, he was compelled to deposit the sum of ₹10,00,000/- [₹5,00,000/- under CGST Act and ₹5,00,000/- under DGST Act.

At about 9:00 pm, he was made to fill up FORM GST DRC-03 on the laptop carried by the officers of the visiting team. At the material time he was under the control of the officers and was interrogated on account of alleged inadmissible ITC availed in respect of supplies purchased from one M/s Hari Om Chemicals.

Contention of Petitioner:

The authorization for the search was issued mechanically and that there were no reasons to believe that any of the grounds as set out under Section 67(1)(a) of the CGST Act were satisfied.

The proceedings initiated under Section 67 of the CGST Act are illegal as prior to the said search, the DGST Authorities had initiated similar proceedings, by conducting a search at the petitioner's principal place of business on 18.10.2022.

The petitioner was neither given the copy of the authorization nor was he informed of the reasons as to why the search was being conducted. His statement was recorded but he was neither provided a copy of the statement nor the punchnama.

The petitioner had sent a letter dated 14.11.2022, calling upon the Department not to proceed further in view of Section 6(b)(2) of the CGST Act.

Contention of Department:

The officers visited the premises of the petitioner on the basis of an authorization issued in FORM GST INS-01 dated 11.11.2022. On reaching the premises, the same were found closed. The petitioner was contacted and informed about the inspection. He arrived at the premises along with his son and opened the same. He informed that his accountant was on leave and that he would submit all documents such as purchase ledger, purchase invoices from M/s. Hari Om Chemicals, bank statements of the firms, copy of e-way bills and other necessary documents on 15.11.2022.

The petitioner voluntarily deposited ₹10,00,000/- by furnishing FORM GST DRC-03. The total ineligible ITC received by the petitioner from M/s Hari Om Chemicals was to the extent of ₹47,38,137/-. However, the petitioner had chosen to deposit only a sum of ₹10,00,000/.

Findings & Decision of the Court:

In the present case, the information that the petitioner had purchased the goods from a supplier, which was found to be non-existent at his principal place of business, has a direct link in forming the belief that the petitioner wrongfully availed of the ITC. The central officers had conducted the inspection pursuant to an ongoing investigation in regard to creation of fake firms to fraudulently avail ITC. Thus, there is no ground to declare any search or inspection conducted on 12.11.2022 as illegal on the ground that there was no reason to believe that the petitioner had wrongfully availed the ITC.

The provisions of Section 6(2)(b) of the CGST Act do not preclude the central officers from conducting an inspection for concluding an ongoing investigation merely because a prior inspection or search was conducted by the DGST authorities.

The deposit of ₹10,00,000/- was made by the petitioner in the FORM GST DRC-03 at about 9:00 pm while the officers were conducting the inspection. The petitioner immediately, by a letter dated 14.11.2022 claimed that the deposit was made involuntarily and under coercion. It is not disputed that FORM GST DRC-03 had been submitted from the laptop carried by the visiting team. Thus, it was directed to refund the sum of ₹10,00,000/- deposited by the petitioner in FORM GST DRC-03 on 12.11.2022.