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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-14843-2023 (O&M)
DECIDED ON: 04.11.2024**

M/S J.S.B. TRADING CO.**.....PETITIONER****VERSUS****STATE OF PUNJAB AND ANOTHER****.....RESPONDENTS**

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH.**

Present: Mr. Paras Jain, Advocate,
for the petitioner.

Mr. Saurabh Kapoor, Addl. AG, Punjab.

SANJEEV PRAKASH SHARMA, J (ORAL)

1. The petitioner – firm is stated to be dealing in the business of sale and purchase of iron scrap. It claimed purchases amounting to sum of Rs. 49,45,578/- from M/s RP Metals and M/s Amarinder Singh.
2. A notice dated 05.09.2022 under Section 61 of Punjab GST/CGST Act, 2017 (hereinafter referred to as ‘the Act’) was issued for scrutiny of the return by the Proper Officer to explain about the ITC claimed on the purchases, alleging that during the period 2017-18, the firm had claimed ITC from four different firms, whose registration had already been cancelled, and therefore, the petitioner was directed to prove the genuineness of the claim regarding ITCs.
3. The petitioner submitted its reply to the notice and was intimated, vide GST ASMT-12 on 28.02.2023 that their reply had been found



to be satisfactory, and no further action is required to be taken in the matter for the financial year 2017-18.

4. At the same time, on 23.02.2023, an intimation under Rule 142 (1) (A) in Form GST DRC 01A was issued for FY 2017-18, wherein it was mentioned that reply to the notice under Section 61 in Form ASMT-10 of GST Act, 2017 was not found to be satisfactory and the demand was, therefore, raised for a sum of Rs.17,96,557/-.

5. Learned counsel for the petitioner submits that the reply having been found satisfactory and intimation having been received of no further action to be taken against them, vide letter dated 28.02.2023, the petitioner did not deposit any amount as claimed under Section 74(5) of the GST Act, 2017. However, notice has been issued to them on 21.04.2023, under Section 74 of the Act for the same reasons and allegations as were mentioned in the notice under Section 61 of the Act.

The petitioner submitted its reply to the show cause notice and pointed out that the proceedings stood dropped under Section 61 of the Act, and therefore, further proceedings under Section 74(1) of the Act could not have been initiated.

Thereafter, the respondents have passed an order on 14.06.2023, wherein concerned Proper Officer, while noticing that the proceedings under ASMT10 have been dropped on 28.02.2023, and the independent proceedings under Section 74 of the CGST Act, 2017 had already been initiated against the taxpayer on 23.02.2023, passed an order of imposing total penalty and interest in the sum of Rs.25,94,938/-.



Learned counsel for the petitioner further submits that the order dated 14.06.2023 passed by the respondents is illegal and unjustified, firstly on the ground that once the notice under Section 61 stood dropped, the Proper Officer could not have proceeded further under Section 74(1) of the Act, and further the order was also vitiated on the ground of violation of principles of natural justice, as the petitioner had demanded in terms of Section 75(4) of the Act – an opportunity of personal hearing, which was admittedly not provided to him.

6. *Per contra*, learned counsel appearing for the State has supported the order and submitted that as the proceedings under Section 74(5) of the Act stood initiated on 23.02.2023, the order of dropping the proceedings under Section 61 on 28.02.2023 i.e. later on, was obviously erroneous and treating the same so, the Authority has proceeded. Therefore, there is no need of interference.

Learned State counsel further submits that the petitioner has not filed any reply to the proceedings initiated, vide notice dated 23.02.2023, under Section 74(5) of the Act and also did not upload any documentary evidence to prove the genuineness of the ITC claim, and therefore, the order dated 14.06.2023 passed by the respondents, does not warrant any interference.

7. We have considered the submissions addressed by counsel for both the parties.

8. Provisions of Section 61 of the CGST Act, 2017, need to be noticed, which are reproduced as under:-



“61. Scrutiny of returns.—

(1) The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.

(2) In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

(3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.”

9. Section 74 of the CGST Act, 2017 has two parts, one is Section 74(1) which reads as under:-

“74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful misstatement or suppression of facts.—

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so



paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.”

and the other is Section 74(5) of the Act which is a provision before initiating the proceedings under Section 74(1) of the Act.

For reference, same is also reproduced as under:-

“(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.”

10. The *sine qua non* for initiating proceedings under Section 74 are that the concerned officer should reach to a conclusion that the ITC has been wrongly availed or utilized by reason of fraud or any wilful mis-statement or suppression of facts to evade tax.

11. As far as the present case is concerned, we find that once, the notice was issued to the petitioner under Section 61(1) of the Act, he filed his reply and explained how ITC had been claimed as against the business conducted with the concerned parties. The same was assessed by the concerned officer and the Proper Officer passed an order independently dropping the proceedings under Section 61(2) of the Act, 2017. However, if



we read Section 61(3) of the Act, 2017, we find that the said proceedings are only consequential i.e. when the Proper Officer reaches to a conclusion that the reply is not satisfactory. In the letter issued on 23.02.2023, while ascertaining the liability of the petitioner under Section 74(5) of the Act, the concerned Proper Officer also mentions that reply to notice under Section 61 is not found satisfactory.

12. Thus, there are two different views expressed by the same Proper Officer, one while intimating the liability under Section 74(5) of the Act and the other by subsequently dropping the proceedings under Section 61(2) on 28.02.2023.

13. Therefore, it can be presumed that after the notice was given under Section 74(5) of the Act, the Authority has reached to the conclusion that no additional demand is payable/chargeable and therefore, the proceedings stand dropped. Thus, on that day when the order was passed on 28.02.2023, proceedings initiated on 23.02.2023 would also stand closed and the Authority could not have thereafter again issued notice under Section 74(1) of the Act. The entire proceedings after passing of order on 28.02.2023 are, thus, found to be vitiated in law, and are accordingly quashed and set aside.

14. Question regarding violation of principles of natural justice are not required to be gone into, in view of the aforesaid observations. Although, we may observe that provisions of Section 75(4) of the Act are mandatory in all cases where there are proceedings for imposition of tax.



15. Be that as it may, considering that the proceedings drawn under Section 74(1) of the Act and passing of order thereto on 14.06.2023 have been held to be vitiated, we need not further delve upon the said aspect and accordingly, we allow this writ petition by quashing and setting aside the order dated 14.06.2023 and notice issued under Section 74(1) dated 21.04.2023.

16. Pending miscellaneous application(s), if any, also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

04.11.2024

Lavisha

Whether speaking/reasoned ✓ *Yes/No*

Whether reportable ✓ *Yes/No*