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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 6609/2021

M/S. AJANTA INDUSTRIES Petitioner
Through Mr. Rajesh Mahna, Advocate

versus

COMMISSIONER OF CENTRAL
GOODS AND SERVICES TAX & ANR. Respondents
Through Mr. Harpreet Singh, Sr. Standing
Counsel with Mr. Arunesh Sharma
and Ms. Suhani Mathur, Advocates
for R-1.
Mr. Devesh Singh, ASC with
Mr. Manas Bhatnagar, Advocate for
GNCTD.

% Date of Decision: 16th July, 2021.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

JUDGMENT

MANMOHAN, J: (Oral)

The hearing has been conducted through video conferencing.

CM No.20760/2021

Allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

W.P.(C) 6609/2021

1. Present writ petition has been filed challenging the rejection order dated 04th April 2021 passed by respondent no.2 in RFD-06. Petitioner seeks refund of Rs.2,05,05,890/- for the period of April 2020-May 2020 along with interest thereon in accordance with law.

2. Learned counsel for the petitioner states that the petitioner was unable to discharge its GST liability in the third half of the year 2020-21 due to financial constraints. He states that the petitioner had duly filed all its returns upto April and May 2020 and is entitled to refund within sixty days from the date of filing Form GST-RFD-01 in accordance with Section 54(7) of the Central Goods and Services Tax Act, 2017. He states that as per Rule 90 of Central Goods and Services Tax Rules, it is mandatory to issue the acknowledgement in RFD-02 within fifteen days and if not done, all further proceedings would be without jurisdiction. Consequently, according to learned counsel for petitioner, due to lapse of time, the respondent is bound to grant refund as prayed for.

3. However, a perusal of the impugned order reveals that very serious findings of fake Input Tax Credit have been given by the respondent no. 2 in the impugned order. The relevant portion of the impugned order is reproduced hereinbelow:-

“6. Discussion and Findings.

xxxx xxxx xxxx xxxx

6.2 Show Cause Notice has been issued to the taxpayer on the basis of findings reported by the Anti Evasion, Branch summarised as below:-

- i. Premise found locked during visit on 06.07.2020;
- ii. L2 supplier found non-existent at the declared business premises;
- iii. Mismatch in HSN of ITC passed on outward supplies and HSN of ITC received on inwards supplies;
- iv. L2 suppliers have issued fake and bogus invoices and passed on fake ITC;
- v. Summons issued to L1 suppliers have been received back undelivered.

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It is evident that Section 54(3) the GST Act envisages refund of unutilized input tax credit under only two circumstances viz. zero-rated supplies made without payment of tax and credit accumulated on account of inverted tax structure, however subject to provisions of sub-section 10 of section 54 of CGST Act, 2017.

6.5 I further notice that as per GSTR-2A, the taxpayer has received Input tax credit mainly from three L1 stage suppliers, viz. M/s Gaurav Industries (07 AAVFG0017C1ZQ); M/s Isha International (07 AAHFI5290D1ZF) and M/s Ganesh Industries (07AATFG4715B1ZH).

6.6 As per GST portal, the GST registration of M/s Gaurav Industries and M/s Isha International have been cancelled suo mota by GST department with effect from 14.03.2020 and 24.04.2019 respectively, however, as per GSTR-2A, they had supplied goods in the month of April 2020.

6.7 Further, the Anti Evasion branch has reported that the premises of taxpayer was visited on 06.07.2020 and it was found locked; that Summons dated 14.07.2020 was issued to Sh. Narender Kumar Saini, partner in M/s Ajanta Industries, in relation to another firm M/s Sadhana Pharma Indus tries which is also under investigation; that Sh. Narender Kumar Saini neither appeared nor submitted any documents till date; that during analysis of Input Tax Credit availed by the taxpayer, it

was seen that one of the L2 supplier of the taxpayer i.e M/s Sagar International (07ADVFS8382F1ZA) had made outward supplies and passed ITC for medicine (HSN -3004) and Ready made Garments & Synthetic Wallets (HSN; 62, 4202), however they had received inward supplies and ITC for Dry Fruits i.e, Almonds, Anjeer, Pista etc. (HSN 0802, 0804, 2008); that M/s Sagar International has been found non-existent at the principal place of business; that Summons issued to L1 supplier of the taxpayer i.e. M/s Ganesh Industries has been received back undelivered; that it appeared that the L2 supplier M/s Sagar International has issued bogus invoices and passed on fake ITC; that the taxpayer is also reflected in Report 35A of DGARM and a report "Not recommended" has been sent; that further investigation is in progress."

From above report of Anti Evasion, It is clear that the L1 and L2 suppliers have passed on fake Input Tax Credit for which the taxpayer is claiming refund. Premise of the taxpayer was found locked at the time of visit by Anti Evasion. No documents in response to the Summons have been submitted by taxpayer. The taxpayer has neither submitted any documents to the Anti Evasion branch till date nor appeared before the investigation agency.

6.8 In view of above, the claim of refund of ITC amounting to Rs. 2,05,05,890/- detailed as under is liable to be rejected.....”

4. It is settled law that a petitioner who files a petition invoking the extraordinary writ jurisdiction has to come to Court with clean hand. Further, a petitioner who seeks equity must do equity. In commercial/appellate jurisdiction, a Court may have to grant relief if all the ingredients of a statutory provision are satisfied. But this is not so in a writ jurisdiction where relief may be denied to a petitioner on the ground that he has not approached the Court with clean hands, even when he satisfies all the ingredients of a statutory provision.

5. In the present case, none of the findings given in the impugned order like premises of the petitioner being found locked during inspection; the partner of the petitioner not responding to the Summons; and L1 & L2 suppliers having issued fake and bogus invoices and passed on fake Input Tax Credit, have been dealt with leave alone challenged. Consequently, this Court is of the view that it would not be appropriate to entertain the present writ petition. Moreover, as the impugned order is an appealable order, present writ petition is dismissed, with liberty to the petitioner to avail the appellate remedy in accordance with law. Needless to say that the appeal shall be decided on its own merit without being influenced by any observation made by this Court.

6. Before parting with this case, this Court would like to observe that the counsel should be more careful in their filings as in the present case the List of Dates of another case has been filed.

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

MANMOHAN, J

NAVIN CHAWLA, J

JULY 16, 2021

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